

Senate Daily Reader

Monday, February 28, 2005

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State of South Dakota

EIGHTIETH
LEGISLATIVE ASSEMBLY, 2005

868L0072

**HOUSE GOVERNMENT OPERATIONS AND AUDIT
COMMITTEE ENGROSSED NO. HB 1005 -
02/15/2005**

Introduced by: Representatives Klaudt and Lange and Senators Koskan, Duniphan, and Moore at the request of the Committee on Government Operations & Audit

1 FOR AN ACT ENTITLED, An Act to provide for the deposit and appropriation of certain
2 federal reimbursements.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 4-4 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Indirect cost reimbursements received from the federal government shall be deposited in the
7 fund that incurred the indirect costs. Funds of the Board of Regents are exempt from this
8 requirement.

9 Section 2. The state treasurer shall transfer that portion of cash balances in federal funds that
10 have accumulated in each fund over two hundred fifty thousand dollars as of June thirtieth due
11 to indirect cost reimbursements received from the federal government to those funds that
12 incurred the indirect cost expenditures. Funds of the Board of Regents are exempt from this
13 requirement.



State of South Dakota

EIGHTIETH LEGISLATIVE ASSEMBLY, 2005

400L0270

HOUSE ENGROSSED NO. **HB 1025** - 02/16/2005

Introduced by: The Committee on Appropriations at the request of the Board of Regents

1 FOR AN ACT ENTITLED, An Act to authorize the South Dakota Building Authority and the
2 Board of Regents to implement the long-term capital project request of the Board of
3 Regents, providing for the construction, remodeling, or renovation of various structures on
4 the campuses of the state's universities and the School for the Deaf, to make appropriations
5 therefor, and to repeal certain previous capital project authorizations.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

7 Section 1. It is in the public interest that the South Dakota Building Authority contract for
8 the construction, completion, furnishing, equipping, and maintaining of, including heating, air
9 conditioning, plumbing, water, sewer, electric facilities, sidewalks, parking, landscaping,
10 architectural and engineering services, asbestos abatement, removal of existing roofing and
11 structures, and such other services or actions as may be required to accomplish the projects
12 enumerated in section 3 of this Act, all at the estimated cost of one hundred million eight
13 hundred thousand dollars. The South Dakota Building Authority may finance up to sixty-five
14 million one hundred thousand dollars of the construction costs through the issuance of revenue
15 bonds, in accordance with this Act and chapter 5-12.

16 Section 2. In addition to those projects approved in section 1 of this Act, the Board of



1 Regents may contract for the construction, completion, furnishing, equipping, and maintaining
2 of, including heating, air conditioning, plumbing, water, sewer, electric facilities, architectural
3 and engineering services, asbestos abatement, removal of existing roofing and structures, and
4 such other services as may be required to accomplish the projects enumerated in section 4 of this
5 Act, all at the estimated cost of one million sixty-eight thousand eight hundred and nine dollars.

6 Section 3. The projects authorized in section 1 of this Act, to be financed, in whole or in
7 part, through the issuance of revenue bonds by the South Dakota Building Authority, are the
8 following:

- 9 (1) The Woodburn Hall renovation at Black Hills State University in Spearfish, South
10 Dakota, for an estimated cost of five million four hundred thousand dollars;
- 11 (2) The utility infrastructure renovation at Dakota State University in Madison, South
12 Dakota, for an estimated cost of three million dollars;
- 13 (3) The Lincoln Hall and Graham Hall renovation at Northern State University in
14 Aberdeen, South Dakota, for an estimated cost of three million dollars;
- 15 (4) The chemistry building replacement at the South Dakota School of Mines and
16 Technology In Rapid City, South Dakota, for an estimated cost of sixteen million
17 dollars, of which no more than ten million dollars may be financed through the
18 issuance of revenue bonds;
- 19 (5) The Shepard Hall renovation or replacement space at South Dakota State University
20 in Brookings, South Dakota, for an estimated cost of thirty million dollars, of which
21 no more than twenty-four million dollars may be financed through the issuance of
22 revenue bonds;
- 23 (6) The classroom building construction at USDSU in Sioux Falls, South Dakota, for an
24 estimated cost of seven million seven hundred thousand dollars;

- 1 (7) The graduate education and research center construction at USDSU in Sioux Falls,
2 South Dakota, for an estimated cost of fifteen million dollars, of which no more than
3 two million dollars may be financed through the issuance of revenue bonds;
- 4 (8) The Slagle Hall renovation at the University of South Dakota in Vermillion, South
5 Dakota, for an estimated cost of six million six hundred thousand dollars, of which
6 no more than four million six hundred thousand dollars may be financed through the
7 issuance of revenue bonds; and
- 8 (9) The business school replacement at the University of South Dakota in Vermillion,
9 South Dakota, for an estimated cost of fourteen million one hundred thousand
10 dollars, of which no more than five million four hundred thousand dollars may be
11 financed through the issuance of revenue bonds.

12 Section 4. The projects authorized in section 2 of this Act are the following:

- 13 (1) The construction of an addition to the Pugsley Continuing Education Center at South
14 Dakota State University in Brookings, South Dakota, for an estimated cost of five
15 hundred two thousand two hundred eighty-nine dollars from other funds made
16 available to the university from donations for its early childhood development
17 program; and
- 18 (2) The renovation of the Myklebust Recreational Center at the South Dakota School for
19 the Deaf in Sioux Falls, South Dakota, for an estimated cost of five hundred sixty-six
20 thousand five hundred twenty dollars, of which five hundred sixteen thousand five
21 hundred twenty dollars (\$516,520) are appropriated from other funds available to the
22 School for the Deaf and fifty thousand dollars (\$50,000) are appropriated from
23 moneys allocated to this project by the Bureau of Administration from the statewide
24 maintenance and repair fund established in § 5-14-30.

1 Section 5. The authorizations granted under section 1 of this Act, and all necessary
2 appropriations required to finance and to complete such projects, remain effective through
3 June 30, 2015. However, no bonds may be issued under the authority of this Act if such issuance
4 would violate the restriction established in § 13-51-2.

5 Section 6. All cost estimates contained in this Act have been stated in terms of 2004 values.
6 The Building Authority and the Board of Regents may adjust such cost estimates to reflect
7 inflation as measured by the Building Cost Index reported by the Engineering News Record. The
8 amount of bonded indebtedness authorized in section 1 of this Act is not subject to such
9 adjustment.

10 Section 7. No indebtedness, bond, or obligation incurred or created under the authority of
11 this Act may be or may become a lien, charge, or liability against the State of South Dakota, nor
12 against the property or funds of the State of South Dakota within the meaning of the
13 Constitution or statutes of the state.

14 Section 8. The Building Authority and the Board of Regents may accept, transfer, and
15 expend any property or funds obtained for these purposes from federal sources, gifts,
16 contributions, or any other source, all of which shall be deemed appropriated to the projects
17 authorized by this Act in addition to the amounts otherwise authorized by this Act.

18 Section 9. The administration of the design and construction of the projects authorized in
19 this Act shall be under the general charge and supervision of the Bureau of Administration as
20 provided in chapter 5-14. The executive director of the Board of Regents and the executive
21 secretary of the Building Authority, or their designees, shall approve vouchers and the state
22 auditor shall draw warrants to pay expenditures authorized by this Act.

23 Section 10. The Board of Regents may make and enter into a lease agreement with the
24 Building Authority and make rental payments under the terms thereof, pursuant to chapter 5-12,

1 from the higher education facilities fund for the purposes of this Act.

2 Section 11. That subdivision (9) of section 3 of chapter 95 of the 2001 Session Laws be
3 repealed.

4 ~~— (9) — The Shepard Hall renovation or replacement space at the South Dakota State~~
5 ~~University in Brookings, South Dakota, for an estimated cost of twenty million~~
6 ~~dollars of which no more than eleven million eight hundred thousand dollars may be~~
7 ~~financed for the Shepard Hall renovation or replacement space through the issuance~~
8 ~~of revenue bonds.~~

9 Section 12. That subdivision (2) of section 4 of chapter 95 of the 2001 Session Laws be
10 repealed.

11 ~~— (2) — The new business school at the University of South Dakota in Vermillion, South~~
12 ~~Dakota, for an estimated cost of twelve million eight hundred thousand dollars which~~
13 ~~may be funded from federal sources and private donations;~~

14 Section 13. That subdivision (5) of section 4 of chapter 95 of the 2001 Session Laws be
15 repealed.

16 ~~— (5) — The Slagle Auditorium renovation at the University of South Dakota in Vermillion,~~
17 ~~South Dakota, for an estimated cost of three million five hundred thousand dollars~~
18 ~~which may be funded from federal sources and private donations.~~

19 Section 14. Notwithstanding any other provision of state law, no money appropriated from
20 the state general fund, nor appropriated for statewide maintenance and repair, may be used to
21 finance the maintenance and repair of the facilities authorized in section 3 or subdivision (1) of
22 section 4 of this Act.

State of South Dakota

EIGHTIETH
LEGISLATIVE ASSEMBLY, 2005

400L0352

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1042 - 02/23/2005

This bill has been extensively amended (houghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: The Committee on Transportation at the request of the Department of Revenue and Regulation

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding abandoned motor
2 vehicles.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 32-30-12.2 be amended to read as follows:

5 32-30-12.2. No person ~~shall intentionally~~ may abandon a motor vehicle on any public
6 highway or right-of-way. A violation of this section is a ~~Class 1~~ Class 2 misdemeanor. Any
7 person convicted of abandoning a motor vehicle shall be ordered to pay ~~a fine of five hundred~~
8 ~~dollars~~ any reasonable towing and storage fees, if the person was notified pursuant to § 32-36-8.

9 The court shall suspend the fine if the person pays for the towing and storage expenses.



State of South Dakota

EIGHTIETH
LEGISLATIVE ASSEMBLY, 2005

400L0320

HOUSE APPROPRIATIONS COMMITTEE ENGROSSED

NO. **HB 1051** - 02/14/2005

Introduced by: The Committee on Appropriations at the request of the Department of Game,
Fish and Parks

1 FOR AN ACT ENTITLED, An Act to authorize the South Dakota Building Authority to
2 provide for the construction, reconstruction, renovation, and modernization of fish hatchery
3 facilities and infrastructure at Blue Dog State Fish Hatchery at Blue Dog Lake, Cleghorn
4 State Fish Hatchery at Rapid City, and McNenny Fish Hatchery at Spearfish for the
5 Department of Game, Fish and Parks.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

7 Section 1. It is in the public interest that the South Dakota Building Authority contract for
8 the construction, reconstruction, renovation, modernization, and the furnishing, equipping, and
9 maintaining of fish hatchery facilities and related infrastructure at the Blue Dog State Fish
10 Hatchery at Blue Dog Lake, the Cleghorn State Fish Hatchery at Rapid City, and the McNenny
11 Fish Hatchery at Spearfish, including buildings, fixtures, plumbing, water, sewer, electric
12 facilities, water pumping infrastructure, domestic water treatment systems, asbestos removal,
13 electrical upgrades, upgraded and modernized fish rearing units, water handling systems,
14 architectural, engineering, and bonding services, site preparation, construction of facilities and
15 improvements to the outside of the fish hatcheries, and landscaping the grounds of the facilities.



1 The Building Authority may finance this project, including the issuance of revenue bonds not
2 to exceed ten million dollars, in accordance with this Act and chapter 5-12.

3 Section 2. No indebtedness, bond, or obligation incurred or created under authority of this
4 Act may be or may become a lien, charge, or liability against the State of South Dakota, nor
5 against the property or funds of the State of South Dakota within the meaning of the
6 Constitution or statutes of South Dakota.

7 Section 3. The Building Authority may accept and expend in addition to the amount
8 specified in section 1 of this Act for the purpose stated in the section, any funds obtained from
9 gifts, contributions, or other sources for the purpose.

10 Section 4. The Department of Game, Fish and Parks may make and enter in a lease
11 agreement with the Building Authority and make rental payments under the terms thereof,
12 pursuant to chapter 5-12, from appropriations to be made by the Legislature for the payment of
13 rent to support the construction, completion, furnishing, equipping, and payment of revenue
14 bonds issued pursuant to section 1 of this Act. All amounts so appropriated shall be repaid by
15 transfers from the Department of Game, Fish and Parks fund.

16 Section 5. Upon receipt of payment of the balance of the total cost, the Building Authority
17 shall convey the fish hatcheries to the Department of Game, Fish and Parks pursuant to § 5-12-
18 15.

19 Section 6. The design and construction of such fish hatcheries shall be under the general
20 charge and supervision of the Bureau of Administration as provided in § 5-14-2. The Bureau
21 of Administration and the Department of Game, Fish and Parks shall approve vouchers and the
22 state auditor shall draw warrants to pay expenditures authorized by this Act.

23 Section 7. Notwithstanding the provisions of § 13-51-2, no money from the state general
24 fund, student tuition fees, the educational facilities fund, nor any money appropriated for

- 1 statewide maintenance and repair, may be used to finance the maintenance and repair of the
- 2 facilities specified in this Act.

State of South Dakota

EIGHTIETH SESSION LEGISLATIVE ASSEMBLY, 2005

339L0339

SENATE EDUCATION COMMITTEE ENGROSSED NO. **HB 1067** - 02/24/2005

Introduced by: Representatives Rhoden and Hargens and Senators Bogue and Moore

1 FOR AN ACT ENTITLED, An Act to revise the property tax levies for the general fund and the
2 special education tax levy of a school district.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 10-12-42 be amended to read as follows:

5 10-12-42. For taxes payable in ~~2005~~ 2006 and each year thereafter, the levy for the general
6 fund of a school district shall be as follows:

7 (1) The maximum tax levy shall be ~~eleven~~ ten dollars and ~~forty-five~~ ninety cents per
8 thousand dollars of taxable valuation subject to the limitations on agricultural
9 property as provided in subdivision (2) of this section, owner-occupied property as
10 provided for in subdivision (3) of this section, and nonagricultural acreage property
11 as provided for in subdivision (4) of this section;

12 (2) The maximum tax levy on agricultural property for such school district shall be three
13 dollars and ~~thirty-two~~ sixteen cents per thousand dollars of taxable valuation. If the
14 district's levies are less than the maximum levies as stated in this section, the levies
15 shall maintain the same proportion to each other as represented in the mathematical



1 relationship at the maximum levies;

2 (3) The maximum tax levy for an owner-occupied single-family dwelling as defined in
3 § 10-13-40, for such school district may not exceed five dollars and ~~thirty-four~~ nine
4 cents per thousand dollars of taxable valuation. If the district's levies are less than the
5 maximum levies as stated in this section, the levies shall maintain the same
6 proportion to each other as represented in the mathematical relationship at the
7 maximum levies; and

8 (4) The maximum tax levy on nonagricultural acreage property as defined in § 10-6-
9 33.14, for such school district shall be four dollars and ~~thirty-two~~ sixteen cents per
10 thousand dollars of taxable valuation. If the district's levies are less than the
11 maximum levies as stated in this section, the levies shall maintain the same
12 proportion to each other as represented in the mathematical relationship at the
13 maximum levies.

14 All levies in this section shall be imposed on valuations where the median level of
15 assessment represents eighty-five percent of market value as determined by the Department of
16 Revenue and Regulation. These valuations shall be used for all school funding purposes. If the
17 district has imposed an excess levy pursuant to § 10-12-43, the levies shall maintain the same
18 proportion to each other as represented in the mathematical relationship at the maximum levies
19 in this section. The school district may elect to tax at less than the maximum amounts set forth
20 in this section.

21 Section 2. That § 13-37-35.1 be amended to read as follows:

22 13-37-35.1. Terms used in chapter 13-37 mean:

23 (1) "Level one disability," a mild disability;

24 (2) "Level two disability," a mental retardation or emotional disorder;

- 1 (3) "Level three disability," hearing impairment, deafness, visual impairment,
2 deaf-blindness, orthopedic impairment, or traumatic brain injury;
- 3 (4) "Level four disability," autism;
- 4 (5) "Level five disability," multiple disabilities;
- 5 (5A) "Level six disability," prolonged assistance;
- 6 (6) "Index factor," is the annual percentage change in the consumer price index for urban
7 wage earners and clerical workers as computed by the Bureau of Labor Statistics of
8 the United States Department of Labor for the year before the year immediately
9 preceding the year of adjustment or three percent, whichever is less;
- 10 (7) "Local effort," is the amount of taxes payable each year, using a levy for the special
11 education fund of a school district of one dollar and twenty-five cents per thousand
12 dollars of taxable valuation;
- 13 (8) "Allocation for a student with a level one disability," for the school fiscal year
14 beginning July 1, 2004, is \$3,533.13. For each school year thereafter, the allocation
15 for a student with a level one disability shall be the previous fiscal year's allocation
16 for such child increased by the lesser of the index factor or three percent;
- 17 (9) "Allocation for a student with a level two disability," for the school fiscal year
18 beginning July 1, 2004, is \$8,277.21. For each school year thereafter, the allocation
19 for a student with a level two disability shall be the previous fiscal year's allocation
20 for such child increased by the lesser of the index factor or three percent;
- 21 (10) "Allocation for a student with a level three disability," for the school fiscal year
22 beginning July 1, 2004, is \$12,580.73. For each school year thereafter, the allocation
23 for a student with a level three disability shall be the previous fiscal year's allocation
24 for such child increased by the lesser of the index factor or three percent;

1 (11) "Allocation for a student with a level four disability," for the school fiscal year
2 beginning July 1, 2004, is \$12,001.80. For each school year thereafter, the allocation
3 for a student with a level four disability shall be the previous fiscal year's allocation
4 for such child increased by the lesser of the index factor or three percent;

5 (12) "Allocation for a student with a level five disability," for the school fiscal year
6 beginning July 1, 2004, is \$15,882.21. For each school year thereafter, the allocation
7 for a student with a level five disability shall be the previous fiscal year's allocation
8 for such child increased by the lesser of the index factor or three percent;

9 (12A) "Allocation for a student with a level six disability," for the school fiscal year
10 beginning July 2004, is \$8,122.23. For each school year thereafter, the allocation for
11 a student with a level six disability shall be the previous fiscal year's allocation for
12 such child increased by the lesser of the index factor or three percent;

13 (13) "Child count," is the number of students in need of special education or special
14 education and related services according to criteria set forth in rules promulgated
15 pursuant to §§ 13-37-1.1 and 13-37-46 submitted to the Department of Education in
16 accordance with rules promulgated pursuant to § 13-37-1.1;

17 (14) "Average daily membership," the average number of kindergarten through twelfth
18 grade pupils enrolled in all schools operated by the school district during the previous
19 regular school year plus the average number of pupils for whom the district pays
20 tuition;

21 (15) "Nonpublic school," a sectarian organization or entity which is accredited by the
22 secretary of education for the purpose of instructing children of compulsory school
23 age. This definition excludes any school that receives a majority of its revenues from
24 public funds;

(16) "Nonpublic average daily membership," the average number of children under age sixteen who are approved for alternative instruction pursuant to § 13-27-2 during the previous school year plus:

(a) For nonpublic schools located within the boundaries of a public school district with an average daily membership of six hundred or more during the previous school year, the average number of kindergarten through twelfth grade pupils enrolled during the previous regular school year in all nonpublic schools located within the boundaries of the public school district;

(b) For nonpublic schools located within the boundaries of a public school district with an average daily membership of less than six hundred during the previous school year, the average number of resident kindergarten through twelfth grade pupils enrolled during the previous school year in all nonpublic schools located within the State of South Dakota;

(17) "Special education average daily membership," average daily membership plus nonpublic average daily membership;

(18) "Local need," an amount to be determined as follows:

(a) Multiply the special education average daily membership by 0.1013 and multiply the result by the allocation for a student with a level one disability;

(b) Multiply the number of students having a level two disability as reported on the child count for the previous school fiscal year by the allocation for a student with a level two disability;

(c) Multiply the number of students having a level three disability as reported on the child count for the previous school fiscal year by the allocation for a student with a level three disability;

- 1 (d) Multiply the number of students having a level four disability as reported on
- 2 the child count for the previous school fiscal year by the allocation for a
- 3 student with a level four disability;
- 4 (e) Multiply the number of students having a level five disability as reported on
- 5 the child count for the previous school fiscal year by the allocation for a
- 6 student with a level five disability;
- 7 (f) Multiply the number of students having a level six disability as reported on the
- 8 child count for the previous school fiscal year by the allocation for a student
- 9 with a level six disability;
- 10 (g) Sum the results of (a) through (f);
- 11 (19) "Effort factor," the school district's special education tax levy in dollars per thousand
- 12 divided by ~~\$1.25~~ \$1.20. The maximum effort factor is 1.0.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

668L0454

SENATE EDUCATION COMMITTEE ENGROSSED NO. **HB 1093** - 02/25/2005

Introduced by: Representatives Novstrup, Elliott, Frost, Garnos, Halverson, Hennies,
Koistinen, Krebs, Murschel, Nelson, O'Brien, Rhoden, and Sigdestad and
Senators Sutton (Duane) and Hundstad

1 FOR AN ACT ENTITLED, An Act to allow certain nonpublic school students to participate in
2 interscholastic activities at other nonpublic schools.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 13-36 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Any seventh or eighth grade student who attends a nonpublic elementary or middle school
7 that is not affiliated with a nonpublic high school may participate in interscholastic activities
8 at a nonpublic high school, at the discretion of the nonpublic school, if the student meets the
9 same scholastic standards required by the South Dakota High School Activities Association for
10 high school participation.



State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

264L0557

SENATE AGRICULTURE AND NATURAL RESOURCES

COMMITTEE ENGROSSED NO. **HB 1139** -

02/24/2005

Introduced by: Representatives McLaughlin, Buckingham, Cutler, Fryslie, Halverson, Hanks, Murschel, Pederson (Gordon), and Rave and Senators Sutton (Dan), Bartling, Broderick, Hundstad, Koetzle, McCracken, Moore, Peterson (Jim), and Schoenbeck

1 FOR AN ACT ENTITLED, An Act to revise certain provisions related to energy conservation
2 measures.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 1-33B-2 be amended to read as follows:

5 1-33B-2. For the purposes of this chapter, the term[—], energy conservation measure[—], means
6 a training program or facility alteration intended to reduce either energy consumption or
7 operating costs, or both, or increase operating revenues through the generation of energy,
8 renewable energy, or improved metering technology, including the following:

- 9 (1) Insulation of the building or any structure associated with the building;
10 (2) Window or door replacement, weather stripping, or modifications that reduce energy
11 consumption;
12 (3) Automated or computerized energy control systems;
13 (4) Replacement or modification to increase the energy efficiency of the lighting,



1 heating, air conditioning, or ventilating systems;

2 (5) Energy recovery or cogeneration systems;

3 (6) Repair or maintenance items, when included in energy efficiency improvements of
4 the building, if overall measures meet the ~~ten-year~~ fifteen-year payback as provided
5 in § 1-33B-7; ~~and~~

6 (7) Energy source conversions which provide either operational or energy cost savings,
7 or both; and

8 (8) Other energy or utility-related improvements in facilities, systems, or technology that
9 improve energy or metering efficiency or increase operating revenues through the
10 generation of energy, renewable energy, or improved metering technology.

11 Nothing in this section addresses the relationship between an electric utility and its customer
12 under a proposed energy exchange contract, where the customer seeks status as a qualifying
13 facility under the Public Utility Regulatory Policies Act of 1978, as defined by 18 CFR Part 292,
14 Subpart B, as it existed on January 1, 2005.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

209L0582

SENATE EDUCATION COMMITTEE ENGROSSED NO.

HB 1140 - 02/24/2005

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Representatives Buckingham, Bradford, Brunner, Dykstra, Elliott, Hargens, McCoy, Roberts, and Schafer and Senators Peterson (Jim), Bartling, Gray, Hansen (Tom), Hanson (Gary), Kloucek, Koetzle, Kooistra, Moore, Nesselhuf, Olson (Ed), and Sutton (Dan)

1 FOR AN ACT ENTITLED, An Act to revise the calculation of state aid to education and report.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. The calculation of state aid to education as defined in § 13-13-10.1 shall be
4 amended as follows:

5 (1) Revise the index factor to more accurately reflect current economic conditions;

6 (2) Revise the calculation of adjusted average daily membership to include components
7 of sparsity and distance education;

8 (3) Base state aid calculations on the data from the current school year rather than the
9 previous school year;

10 (4) Set a minimum average daily membership that a high school must maintain in order
11 to be eligible to receive state aid to education taking into consideration the distance
12 between high schools;

13 (5) Equalize other revenue through their inclusion in the state aid to education



1 foundation program;

2 (6) Create a school report card with district information including both academic
3 measures and current and projected financial conditions.

4 The revisions to the formula outlined in this Act shall be implemented on a multi-year basis,
5 and they may not result in a higher percentage of statewide local effort.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

308L0677

SENATE EDUCATION COMMITTEE ENGROSSED NO.

HB 1149 - 02/24/2005

This bill has been extensively amended (houghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Representatives Dennert, Deadrick, Glenski, Pederson (Gordon), and Rave
and Senators Bartling, Hanson (Gary), and Moore

1 FOR AN ACT ENTITLED, An Act to allow the Department of Education to enter into certain
2 enrollment agreements with the State of North Dakota and to compensate certain school
3 districts for lost revenue due to the agreements.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. The secretary of the Department of Education may enter into agreements with
6 the appropriate parties from the state of North Dakota to establish an enrollment options
7 program between South Dakota and North Dakota.

8 Section 2. Any agreement entered into pursuant to this Act shall specify the following:

- 9 (1) For students who are not residents of South Dakota, the enrollment options program
10 applies only to a student whose resident school district borders South Dakota;
- 11 (2) If North Dakota sends more students to South Dakota than South Dakota sends to
12 North Dakota, North Dakota will pay South Dakota an amount agreed upon for the
13 excess number of students sent to South Dakota;
- 14 (3) If South Dakota sends more students to North Dakota than North Dakota sends to



1 South Dakota, South Dakota will pay North Dakota an amount agreed upon for the
2 excess number of students sent to North Dakota.

3 Section 3. Any agreement entered into pursuant to this Act shall specify the application
4 procedures for the enrollment options program between South Dakota and North Dakota.

5 Section 4. Any agreement entered into pursuant to this Act shall specify the reasons for
6 which an application for the enrollment options program between South Dakota and North
7 Dakota may be denied.

8 Section 5. Any agreement entered into pursuant to this Act shall specify that a South Dakota
9 school district is not responsible for transportation for any resident student attending school in
10 North Dakota under the provisions of this Act. However, a South Dakota school district may,
11 at its discretion, provide transportation services for such a student.

12 Section 6. Any agreement entered into pursuant to this Act may specify additional terms
13 relating to any student in need of special education or special education and related services
14 pursuant to chapter 13-37.

15 Section 7. For the purposes of state aid to education distributed pursuant to chapter 13-13,
16 any student sent to South Dakota from North Dakota is included in the receiving school district's
17 average daily membership.

18 Section 8. For the purposes of state aid to education distributed pursuant to chapter 13-13,
19 any student sent to North Dakota from South Dakota may not be included in the resident school
20 district's average daily membership.

21 Section 9. Any student whose resident school district does not receive state aid to education
22 under the provisions of chapter 13-13 or 13-37 may not attend school in North Dakota unless
23 the student's resident school district pays the State of South Dakota an amount equal to the per
24 student allocation as defined in chapter 13-13 or 13-37 for each student sent to North Dakota.

1 Section 10. The Department of Education may promulgate rules pursuant to chapter 1-26
2 to establish procedures relating to the application process and the collection or payment of funds
3 under the provisions of any agreement established pursuant to this Act.

4 Section 11. For fiscal years 2006, 2007, and 2008, any school district contiguous to the
5 North Dakota border that receives less revenue under the terms of this Act than it would have
6 otherwise received is entitled to a payment from the Department of Education to compensate
7 for the difference. For fiscal year 2006, the payment shall equal seventy-five percent of the
8 difference; for fiscal year 2007, the payment shall equal fifty percent of the difference; and for
9 fiscal year 2008, the payment shall equal twenty-five percent of the difference.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

168L0675

SENATE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **HB 1152** - 02/23/2005

Introduced by: Representatives Kroger and Rave and Senators Kooistra and Bartling

1 FOR AN ACT ENTITLED, An Act to establish an internal service fund for municipal
2 equipment purchases.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 9-21 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 The governing body of a municipality may by resolution create an internal service fund to
7 provide for the acquisition of equipment. Moneys may be budgeted and transferred to the fund
8 from any source which may lawfully be used for such purpose, including equipment usage
9 charges on any municipal department or agency. For purposes of this section, the term,
10 equipment, includes machinery, motor vehicles, and any other equipment or personal property.



State of South Dakota

EIGHTIETH SESSION LEGISLATIVE ASSEMBLY, 2005

596L0627

HOUSE ENGROSSED NO. **HB 1158** - 02/16/2005

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Representatives Dennert, Glenski, Rausch, Schafer, and Wick and Senators Bartling and McCracken

1 FOR AN ACT ENTITLED, An Act to appropriate funds to provide cochlear implants to certain
2 children.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 49-31-50 be amended to read as follows:

5 49-31-50. There is created in the state treasury the telecommunication fund for the deaf and
6 the telecommunication fund for other disabilities for the deposit and disbursement of money
7 collected under §§ 49-31-49 and 49-31-51. There is hereby continuously appropriated the sum
8 of two hundred thousand dollars (\$200,000), or so much thereof as may be necessary, each year
9 from the telecommunication fund for the deaf to the Department of Human Services to provide
10 cochlear implants to children who are less than five years of age and who suffer from severe to
11 profound hearing loss.

12 Section 2. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
13 follows:

14 Funds appropriated pursuant to section 1 of this Act may only be used for:

15 (1) The costs of providing a cochlear implant to a child who is not covered under a plan



1 of health insurance; or

2 (2) Any portion of the costs of providing a cochlear implant to a child that is not paid by
3 any plan of health insurance covering the child but only for those amounts payable
4 by the covered person under the plan's deductible and coinsurance provisions.

5 Section 3. The Department of Human Services shall promulgate rules pursuant to chapter
6 1-26 to establish standards for eligibility criteria, the basis for and extent of provider payments
7 on behalf of the eligible person, levels of payment, administration, audit requirements, and
8 record keeping of providing cochlear implants.

9 Section 4. The secretary of the Department of Human Services shall approve vouchers and
10 the state auditor shall draw warrants to pay expenditures authorized by this Act.

11 Section 5. This Act is repealed on June 30, 2008.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

817L0546

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED NO. HB 1166 - 02/09/2005

Introduced by: Representatives Hunt, Boomgarden, Brunner, Buckingham, Deadrick, Dykstra, Elliott, Gassman, Gillespie, Glenski, Hackl, Hanks, Hargens, Haverly, Heineman, Hennies, Howie, Hunhoff, Jerke, Klaudt, Koistinen, Kraus, Krebs, Lange, McCoy, Michels, Miles, Novstrup, Olson (Ryan), Pederson (Gordon), Peters, Putnam, Rausch, Rave, Rhoden, Rounds, Schafer, Sebert, Street, Tornow, Van Etten, Weems, Wick, and Willadsen and Senators Bartling, Apa, Broderick, Duenwald, Earley, Gant, Greenfield, Hansen (Tom), Hanson (Gary), Kelly, Kloucek, Koetzle, Kooistra, Koskan, Lintz, McNenny, Moore, Napoli, Olson (Ed), Schoenbeck, Smidt, Sutton (Dan), and Sutton (Duane)

1 FOR AN ACT ENTITLED, An Act to establish certain legislative findings pertaining to the
2 health and rights of women, to revise the physician disclosure requirements to be made to
3 a woman contemplating submitting to an abortion, and to provide for certain causes of
4 action for professional negligence if an abortion is performed without informed consent.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

6 Section 1. The Legislature finds that all abortions, whether surgically or chemically induced,
7 terminate the life of a whole, separate, unique, living human being.

8 Section 2. The Legislature finds that there is an existing relationship between a pregnant
9 woman and her unborn child during the entire period of gestation.

10 Section 3. The Legislature finds that procedures terminating the life of an unborn child
11 impose risks to the life and health of the pregnant woman. The Legislature further finds that a



1 woman seeking to terminate the life of her unborn child may be subject to pressures which can
2 cause an emotional crisis, undue reliance on the advice of others, clouded judgment, and a
3 willingness to violate conscience to avoid those pressures. The Legislature therefore finds that
4 great care should be taken to provide a woman seeking to terminate the life of her unborn child
5 and her own constitutionally protected interest in her relationship with her child with complete
6 and accurate information and adequate time to understand and consider that information in order
7 to make a fully informed and voluntary consent to the termination of either or both.

8 Section 4. The Legislature finds that pregnant women contemplating the termination of their
9 right to their relationship with their unborn children, including women contemplating such
10 termination by an abortion procedure, are faced with making a profound decision most often
11 under stress and pressures from circumstances and from other persons, and that there exists a
12 need for special protection of the rights of such pregnant women, and that the State of South
13 Dakota has a compelling interest in providing such protection.

14 Section 5. The Legislature finds that, through the common law, the courts of the State of
15 South Dakota have imposed a standard of practice in the health care profession that, except in
16 exceptional circumstances, requires physicians and other health care practitioners to provide
17 patients with such facts about the nature of any proposed course of treatment, the risks of the
18 proposed course of treatment, the alternatives to the proposed course, including any risks that
19 would be applicable to any alternatives, as a reasonable patient would consider significant to the
20 decision of whether to undergo the proposed course of treatment.

21 Section 6. That chapter 34-23A be amended by adding thereto a NEW SECTION to read
22 as follows:

23 The South Dakota common law cause of action for medical malpractice informed consent
24 claims based upon the reasonable patient standard is reaffirmed and is hereby expressly declared

1 to apply to all abortion procedures. The duty of a physician to disclose all facts about the nature
2 of the procedure, the risks of the procedure, and the alternatives to the procedure that a
3 reasonable patient would consider significant to her decision of whether to undergo or forego
4 the procedure applies to all abortions. Nothing in this Act may be construed to render any of the
5 requirements otherwise imposed by common law inapplicable to abortion procedures or
6 diminish the nature or the extent of those requirements. The disclosure requirements expressly
7 set forth in this Act are an express clarification of, and are in addition to, those common law
8 disclosure requirements.

9 Section 7. That § 34-23A-10.1 be amended to read as follows:

10 34-23A-10.1. ~~No abortion may be performed except with the voluntary and informed~~
11 ~~consent of the female upon whom the abortion is to be performed. Except in the case of a~~
12 ~~medical emergency, consent to an abortion is voluntary and informed only if:~~

13 ~~—(1)—The female is told the following by the physician who is to perform the abortion or~~
14 ~~by the referring physician, at least twenty-four hours before the abortion:~~

15 ~~—(a)—The name of the physician who will perform the abortion;~~

16 ~~—(b)—The particular medical risks associated with the particular abortion procedure~~
17 ~~to be employed including, when medically accurate, the risks of infection,~~
18 ~~hemorrhage, danger to subsequent pregnancies, and infertility;~~

19 ~~—(c)—The probable gestational age of the unborn child at the time the abortion is to~~
20 ~~be performed; and~~

21 ~~—(d)—The medical risks associated with carrying her child to term;~~

22 ~~—(2)—The female is informed, by telephone or in person, by the physician who is to~~
23 ~~perform the abortion, by the referring physician, or by an agent of either, at least~~
24 ~~twenty-four hours before the abortion:~~

1 ~~———— (a) That medical assistance benefits may be available for prenatal care, childbirth,~~
2 ~~and neonatal care;~~

3 ~~———— (b) That the father is liable to assist in the support of her child, even in instances~~
4 ~~in which the father has offered to pay for the abortion; and~~

5 ~~———— (c) That she has the right to review the printed materials described in § 34-23A-~~
6 ~~10.3 and the website described in § 34-23A-10.4. The physician or the~~
7 ~~physician's agent shall orally inform the female that the materials have been~~
8 ~~provided by the State of South Dakota at no charge to the female. If the female~~
9 ~~chooses to view the materials, they shall either be given to her at least~~
10 ~~twenty-four hours before the abortion or mailed to her at least seventy-two~~
11 ~~hours before the abortion by certified mail, restricted delivery to addressee,~~
12 ~~which means the postal employee can only deliver the mail to the addressee;~~

13 ~~—— (3) The female certifies in writing, prior to the abortion, that the information described~~
14 ~~in subdivisions (1) and (2) of this section has been furnished her, and that she has~~
15 ~~been informed of her opportunity to review the information described in § 34-23A-~~
16 ~~10.3; and~~

17 ~~—— (4) Prior to the performance of the abortion, the physician who is to perform the abortion~~
18 ~~or the physician's agent receives a copy of the written certification prescribed by~~
19 ~~subdivision (3).~~

20 ~~—— The physician may provide the information prescribed in subdivision (1) by telephone~~
21 ~~without conducting a physical examination or tests of the patient, in which case the information~~
22 ~~required to be supplied may be based on facts supplied the physician by the female and whatever~~
23 ~~other relevant information is reasonably available to the physician.~~

24 No abortion may be performed unless the physician first obtains a voluntary and informed

written consent of the pregnant woman upon whom the physician intends to perform the abortion, unless the physician determines that obtaining an informed consent is impossible due to a medical emergency and further determines that delaying in performing the procedure until an informed consent can be obtained from the pregnant woman or her next of kin in accordance with chapter 34-12C is impossible due to the medical emergency, which determinations shall then be documented in the medical records of the patient. A consent to an abortion is not voluntary and informed, unless, in addition to any other information that must be disclosed under the common law doctrine, the physician provides that pregnant woman with the following information:

(1) A statement in writing providing the following information:

(a) The name of the physician who will perform the abortion;

(b) That the abortion will terminate the life of a whole, separate, unique, living human being;

(c) That the pregnant woman has an existing relationship with that unborn human being and that the relationship enjoys protection under the United States Constitution and under the laws of South Dakota;

(d) That by having an abortion, her existing relationship and her existing constitutional rights with regards to that relationship will be terminated;

(e) A description of all known medical risks of the procedure and statistically significant risk factors to which the pregnant woman would be subjected, including:

(i) Depression and related psychological distress;

(ii) Increased risk of suicide ideation and suicide;

(iii) A statement setting forth an accurate rate of deaths due to abortions,

1 including all deaths in which the abortion procedure was a substantial
2 contributing factor;

3 (iv) All other known medical risks to the physical health of the woman,
4 including the risk of infection, hemorrhage, danger to subsequent
5 pregnancies, and infertility;

6 (f) The probable gestational age of the unborn child at the time the abortion is to
7 be performed, and a scientifically accurate statement describing the
8 development of the unborn child at that age; and

9 (g) The statistically significant medical risks associated with carrying her child to
10 term compared to undergoing an induced abortion.

11 The disclosures set forth above shall be provided to the pregnant woman in writing
12 and in person no later than two hours before the procedure is to be performed. The
13 physician shall ensure that the pregnant woman signs each page of the written
14 disclosure with the certification that she has read and understands all of the
15 disclosures, prior to the patient signing a consent for the procedure. If the pregnant
16 woman asks for a clarification or explanation of any particular disclosure, or asks any
17 other question about a matter of significance to her, the explanation or answer shall
18 be made in writing and be given to the pregnant woman before signing a consent for
19 the procedure and shall be made part of the permanent medical record of the patient;

20 (2) A statement by telephone or in person, by the physician who is to perform the
21 abortion, or by the referring physician, or by an agent of both, at least twenty-four
22 hours before the abortion, providing the following information:

23 (a) That medical assistance benefits may be available for prenatal care, childbirth,
24 and neonatal care;

1 (b) That the father of the unborn child is legally responsible to provide financial
2 support for her child following birth, and that this legal obligation of the father
3 exists in all instances, even in instances in which the father has offered to pay
4 for the abortion;

5 (c) The name, address, and telephone number of a pregnancy help center in
6 reasonable proximity of the abortion facility where the abortion will be
7 performed; and

8 (d) That she has a right to review all of the material and information described in
9 this Act, as well as the printed materials described in § 34-23A-10.3, and the
10 website described in § 34-23A-10.4. The physician or the physician's agent
11 shall inform the pregnant woman, orally or in writing, that the materials have
12 been provided by the State of South Dakota at no charge to the pregnant
13 woman. If the pregnant woman indicates, at any time, that she wants to review
14 any of the materials described, such disclosures shall be either given to her at
15 least twenty-four hours before the abortion or mailed to her at least
16 seventy-two hours before the abortion by certified mail, restricted delivery to
17 addressee, which means the postal employee can only deliver the mail to the
18 addressee;

19 Prior to the pregnant woman signing a consent to the abortion, she shall sign a written
20 statement that indicates that the requirements of this section have been complied with. Prior to
21 the performance of the abortion, the physician who is to perform the abortion shall receive a
22 copy of the written disclosure documents required by this section, and shall certify in writing
23 that all of the information described in those subdivisions has been provided to the pregnant
24 woman, that the physician is, to the best of his or her ability, satisfied that the pregnant woman

1 has read the materials which are required to be disclosed, and that the physician believes she
2 understands the information imparted.

3 Section 8. That § 34-23A-1 be amended to read as follows:

4 34-23A-1. Terms as used in this chapter mean:

5 (1) "Abortion," the use of any means to intentionally terminate the pregnancy of a ~~female~~
6 woman known to be pregnant with knowledge that the termination with those means
7 will, with reasonable likelihood, cause the death of the fetus;

8 (2) "Fetus," the biological offspring, including the implanted embryo or unborn child, of
9 human parents;

10 (3) "Fertilization," that point in time when a male human sperm penetrates the zona
11 pellucida of a female human ovum;

12 (4) "Human being," an individual living member of the species of Homo sapiens,
13 including the unborn human being during the entire embryonic and fetal ages from
14 fertilization to full gestation;

15 (5) "Medical emergency," any condition which, on the basis of the physician's good faith
16 clinical judgment, so complicates the medical condition of a pregnant ~~female~~ woman
17 as to necessitate the immediate abortion of her pregnancy to avert her death or for
18 which a delay will create serious risk of substantial and irreversible impairment of
19 a major bodily function;

20 ~~(4)~~(6) "Parent," one parent of the pregnant minor or the guardian or conservator of the
21 pregnant ~~female~~ woman;

22 ~~(5)~~(7) "Physician," a person licensed under the provisions of chapter 36-4 or a physician
23 practicing medicine or osteopathy in the employ of the government of the United
24 States or of this state;

(6)(8) "Probable gestational age of the unborn child," what, in the judgment of the physician, will with reasonable probability be the gestational age of the unborn child at the time the abortion is planned to be performed.

Section 9. That § 34-23A-10.3 be amended to read as follows:

34-23A-10.3. The health department shall publish, in culturally sensitive languages, within ~~sixty one hundred eighty~~ days after July 1, ~~1993~~ 2005, the following printed materials in such a way as to ensure that the information is easily comprehensible:

(1) Materials designed to inform the pregnant woman of all the disclosures enumerated in section 7 of this Act;

(2) Materials designed to inform the ~~female~~ pregnant woman of public and private agencies and services available to assist a ~~female~~ pregnant woman through pregnancy, upon childbirth and while the child is dependent, including adoption agencies, which shall include a list of the agencies available and a description of the services they offer; and

~~(2)~~(3) Materials designed to inform the ~~female~~ pregnant woman of the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from the time when a ~~female~~ pregnant woman can be known to be pregnant to full term, including any relevant information on the possibility of the unborn child's survival and pictures or drawings representing the development of unborn children at two-week gestational increments. Such pictures or drawings shall contain the dimensions of the fetus and shall be realistic and appropriate for the stage of pregnancy depicted. The materials shall be objective, nonjudgmental, and designed to convey only accurate scientific information about the unborn child at the various gestational ages.

1 The materials shall be printed in a typeface large enough to be clearly legible and shall be
2 available at no cost from the ~~health department~~ Department of Health upon request and in
3 appropriate number to any person, facility or hospital.

4 Section 10. If any court of law enjoins, suspends, or delays the implementation of the
5 provisions of section 7 of this Act, the provisions of § 34-23A-10.1, as of June 30, 2005, are
6 effective during such injunction, suspension, or delayed implementation.

7 Section 11. If any court of law finds any provisions of section 7 of this Act to be
8 unconstitutional, the other provisions of section 7 are severable. If any court of law finds the
9 provisions of section 7 of this Act to be entirely or substantially unconstitutional, the provisions
10 of § 34-23A-10, as of June 30, 2005, are immediately reeffective.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

668L0723

SENATE EDUCATION COMMITTEE ENGROSSED NO.

HB 1170 - 02/24/2005

This bill has been extensively amended (houghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Representative Heineman

1 FOR AN ACT ENTITLED, An Act to provide for the certification of distance learning
2 providers and to provide for the endorsement of distance learning instructors and to
3 authorize the Board of Education to promulgate rules relating to distance learning courses.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. For purposes of this Act, distance learning is the technology and educational
6 process used to provide instruction when the student and primary instructor are not physically
7 present at the same time or place.

8 Section 2. No distance learning provider may provide courses through distance learning to
9 any student in an accredited elementary or secondary school in this state unless the distance
10 learning provider has a certificate issued by the secretary of the Department of Education
11 authorizing the distance learning provider to provide the courses.

12 Section 3. The South Dakota Board of Education shall promulgate rules pursuant to chapter
13 1-26 defining a distance learning provider, and establishing the requirements and criteria that
14 an applying provider must meet in order to be issued a distance learning certificate by the
15 secretary of the Department of Education. The rules shall specify the duration and the method



1 of renewal, the amount of the fee, not to exceed one hundred dollars, for issuing a certificate,
2 the application procedures for a certificate, the requirements for certification, and other
3 procedures necessary for the administration of distance learning certification.

4 Section 4. The board shall also promulgate rules pursuant to chapter 1-26 establishing
5 priorities and eligibility for distance learning courses.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

519L0596

HOUSE TAXATION COMMITTEE ENGROSSED NO. **HB 1180** - 02/15/2005

Introduced by: Representatives Schafer, Hanks, Hills, McLaughlin, and Turbiville and
Senators Olson (Ed), Dempster, Duniphan, Gray, Kelly, McCracken, and
Nesselhuf

1 FOR AN ACT ENTITLED, An Act to revise certain provisions concerning business
2 improvement districts and to exempt general occupational tax receipts from the sales and
3 gross receipts taxes.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That § 9-55-3 be amended to read as follows:

6 9-55-3. Any money generated pursuant to § 9-55-2 may be used for any one or more of the
7 following purposes:

- 8 (1) The acquisition, construction, maintenance, and operation of public off-street parking
9 facilities for the benefit of the district area;
- 10 (2) Improvement of any public place or facility in the district area, including landscaping
11 and plantings;
- 12 (3) Construction or installation of convention or event centers, pedestrian shopping malls
13 or plazas, sidewalks, including moving sidewalks, parks, meeting and display
14 facilities, bus stop shelters, lighting, benches or other seating furniture, sculptures,



- 1 trash receptacles, shelters, fountains, skywalks, and pedestrian and vehicular
2 overpasses and underpasses or any useful or necessary public improvement;
- 3 (4) Leasing, acquiring, constructing, reconstructing, extending, maintaining, or repairing
4 parking lots or parking garages, both above and below ground, or other facilities for
5 the parking of vehicles, including the power to install such facilities in public areas,
6 whether such areas are owned in fee or by easement, in the district area;
- 7 (5) Creation and implementation of a plan for improving the general architectural design
8 of public areas in the district area;
- 9 (6) The development of any activities and promotion of ~~events in~~ the district area;
- 10 (7) Maintenance, repair, and reconstruction of any improvements or facilities authorized
11 by this chapter;
- 12 (8) Any other project or undertaking for the betterment of the facilities in the district
13 area, whether the project is capital or noncapital in nature;
- 14 (9) Enforcement of parking regulations within the district area; and
- 15 (10) Employing or contracting for personnel, including administrators for any
16 improvement or promotional program under this chapter, and providing for any
17 service necessary or proper to carry out the purposes of this chapter.

18 Section 2. That § 9-55-4 be amended to read as follows:

19 9-55-4. A business improvement district may only be created as provided by this chapter and
20 shall be within the boundaries of an established business area of the municipality zoned for
21 business, public, or commercial purposes. For the purposes of this chapter, an established
22 business area, may also include noncontiguous property within the incorporated municipality
23 that has a common zoning designation.

24 Section 3. That § 9-55-7 be amended to read as follows:

1 9-55-7. Upon receiving a recommendation from the business improvement board, the
2 governing body may create one or more business improvement districts by adopting a resolution
3 of intent to establish a district or districts. The resolution shall contain the following
4 information:

- 5 (1) A description of the boundaries of any proposed district;
- 6 (2) The time and place of a hearing to be held by the governing body to consider
7 establishment of a district or districts;
- 8 (3) The proposed public facilities and improvements to be made or maintained within
9 any such district; and
- 10 (4) The proposed or estimated costs for improvements, facilities and activities within any
11 district, and the method by which the revenue shall be raised. If a special assessment
12 is proposed, the resolution also shall state the proposed method of assessment.

13 The notice of intent shall recite that the method of raising revenue shall be fair and
14 equitable. In the use of a general occupation tax, the tax shall be based primarily on the square
15 footage of the owner's and user's place of business or based on rooms rented by any lodging
16 establishment to transient guests as defined in § 10-45-7. If the occupational tax is based on
17 rooms rented by a lodging establishment, the tax shall be imposed on the transient guest and
18 such tax may not exceed two dollars per occupied room per night. However, no occupational
19 tax may be imposed on any transient guest who has been offered a room by a lodging
20 establishment on a complimentary basis and no fee or rent was charged for such room. In the
21 use of a special assessment, the assessment shall be based upon the special benefit to the
22 property within the district.

23 Section 4. That § 9-55-10 be amended to read as follows:

24 9-55-10. If a hearing is held under subdivision 9-55-7(2), the governing body shall:

- 1 (1) Hear all protests and receive evidence for or against the proposed action;
- 2 (2) Rule upon all written protests received prior to the close of the hearing, which ruling
- 3 shall be final; and
- 4 (3) Continue the hearing from time to time as the governing body ~~may deem~~ deems
- 5 necessary.

6 If a special assessment is to be used, the proceedings shall terminate if written protest is
7 made prior to the close of the hearing by the owners of a majority of the assessable front footage
8 in the proposed district. If an occupation tax is to be used, the proceedings shall terminate if
9 protest is made by the users of a majority of the space in the proposed district. If the general
10 occupational tax is based upon rented hotel and motel rooms pursuant to ~~§ 9-55-13~~ § 9-55-7,
11 the proceedings shall terminate if written protest is made prior to the close of the hearing by the
12 owners of a majority of the hotels and motels in the proposed district.

13 Any bonds for the construction of a convention facility that are payable from the proceeds
14 of the hotel and motel room general occupational tax may only be issued and sold if at least two-
15 thirds of the hotel and motel owners in the proposed district approve in writing of the issuance
16 and sale of the bonds.

17 Section 5. That § 9-55-13 be amended to read as follows:

18 9-55-13. A municipality may levy a special assessment against the real property located in
19 a district, to the extent of the special benefit on such property, for the purpose of paying all or
20 any part of the total costs and expenses of any project authorized by this chapter, within ~~such~~
21 the district. The amount of each special assessment shall be determined by the governing body.
22 Assessments shall be levied in accordance with the method of assessment proposed in the
23 ordinance creating the district. If the governing body finds that the proposed method of
24 assessment does not provide a fair and equitable method of apportioning costs, then it the

1 governing body may assess the costs under ~~such a method as~~ the governing body finds to be fair
2 and equitable. ~~If the public improvement consists of convention facilities, the general~~
3 ~~occupation tax may be based on rented hotel and motel rooms and units offered and let for~~
4 ~~overnight occupancies of less than thirty continuous calendar days, which tax may not exceed~~
5 ~~two dollars per occupied room per night.~~ Notice of a hearing on any special assessments to be
6 levied under this chapter shall be given to the landowners in ~~such~~ the district by publication of
7 the description of the land, the amount proposed to be assessed, and the general purpose for
8 which ~~such~~ the assessment is to be made, once a week for two weeks in a daily or weekly
9 newspaper of general circulation published in the municipality. The notice shall be published
10 at least thirty days prior to the hearing and shall provide the date, time, and place of the hearing
11 to hear any objections or protests by landowners in the district as to the amount of assessment
12 made against their property. All special assessments levied under this chapter ~~shall be~~ constitute
13 liens on the property and shall be certified for collection and collected in the same manner as
14 other special assessments.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

517L0577

SENATE TRANSPORTATION COMMITTEE ENGROSSED NO. **HB 1202** - 02/24/2005

Introduced by: Representatives Cutler, Hennies, Hunhoff, Kraus, Murschel, Pederson (Gordon), Rounds, Sebert, Tornow, and Willadsen and Senators Napoli, Abdallah, Bartling, Bogue, Moore, and Olson (Ed)

1 FOR AN ACT ENTITLED, An Act to provide for a salvage title.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That § 32-3-26.1 be repealed.

4 ~~— 32-3-26.1. Any insurance company authorized to do business in this state does not need to~~
5 ~~apply for a certificate of title as provided by § 32-3-26, if the motor vehicle, trailer, or~~
6 ~~semitrailer is acquired as the result of an insurance claim settlement and is being transferred to~~
7 ~~a licensed motor vehicle dealer. Instead, upon such a transfer of the motor vehicle, trailer, or~~
8 ~~semitrailer, the insurance company shall give the licensed motor vehicle dealer a reassignment~~
9 ~~of the title of the motor vehicle, trailer, or semitrailer.~~

10 Section 2. For purposes of this Act, the term, salvage vehicle, means any vehicle that an
11 insurer or self insurer determines a total loss due to damage caused by fire, vandalism, collision,
12 weather, submersion in water, or flood. This section does not apply to any motor vehicle more
13 than six model years old or with a gross vehicle weight rating of more than sixteen thousand
14 pounds.



Section 3. That chapter 32-3 be amended by adding thereto a NEW SECTION to read as follows:

If an insurer, in settlement of a total loss insurance claim, or self insurer acquires the ownership of any salvage vehicle as defined in section 2 of this Act that does not have a salvage vehicle title, the insurer shall within thirty days following acquisition of the certificate of title of that vehicle, surrender the certificate of title for such vehicle to the department. The department shall promptly issue a title indicating it is a salvage vehicle to the insurer or self insurer. Once a vehicle has been branded a salvage vehicle, nothing in this section prohibits a person from obtaining a rebuilt title pursuant to § 32-3-53.

Section 4. That chapter 32-3 be amended by adding thereto a NEW SECTION to read as follows:

If an insurer or self insurer declares a vehicle to be a total loss but does not acquire ownership of the vehicle, the owner shall obtain a salvage title for the vehicle. The insurer or self insurer shall, in writing, notify the owner of the obligation to obtain a salvage title before the owner sells or transfers the title. If the owner sells or transfers the ownership of the vehicle without first obtaining a salvage title, the owner is guilty of a Class 1 misdemeanor. This section does not apply to any motor vehicle more than six model years old or with a gross vehicle weight rating of more than sixteen thousand pounds.

Section 5. That § 32-3-51.9 be amended to read as follows:

32-3-51.9. For the purposes of the damage disclosure statement provided by § 32-3-51.8, ~~"damage"~~ the term, damage, is damage to the motor vehicle caused by fire, vandalism, collision, weather, submersion in water, or flood, and does not include normal wear and tear, glass damage, mechanical repairs, or electrical repairs that have not been caused by fire, vandalism, collision, weather, submersion in water, or flood.

1 Section 6. That § 32-3-51.5 be amended to read as follows:

2 32-3-51.5. Any motor vehicle, trailer, or semitrailer whose title has been marked by another
3 state or jurisdiction, shall receive a title, which shall contain the damage disclosure information
4 as set forth in §§ 32-3-51.7 and 32-3-51.8. However, if the title has been branded as salvage or
5 with any other similar brand by another state or jurisdiction the applicant shall receive a salvage
6 title or, at the option of the owner, a junking certificate.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

400L0526

SENATE STATE AFFAIRS COMMITTEE ENGROSSED NO. HB 1212 - 02/18/2005

Introduced by: The Committee on State Affairs at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to professional and
2 occupational licensing boards.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 36-4-1 be amended to read as follows:

5 36-4-1. ~~There is hereby created a~~ The State Board of Medical and Osteopathic Examiners,
6 hereinafter called the Board of Examiners, ~~which board shall consist of six~~ consists of nine
7 members to be appointed by the Governor for terms of ~~five~~ three years. No member may serve
8 more than three consecutive full terms. However, appointment to an unexpired term is not
9 considered a full term for this purpose. Each member shall hold office until ~~his~~ a successor is
10 appointed and qualified. ~~All vacancies~~ Any vacancy on the board shall be filled by appointment
11 by the Governor, ~~but the board must.~~ The board shall at all times include ~~four~~ six doctors of
12 medicine and one doctor of osteopathy. The Governor may stagger terms to enable the board
13 to have different terms expire each year. Any member appointed to the board prior to July 1,
14 2005, shall serve the five-year term to which the member was originally appointed. Any member
15 appointed to the board after July 1, 2005, shall serve a three-year term.



Section 2. That § 36-4-2 be amended to read as follows:

36-4-2. The Board of Examiners shall include ~~four~~ six doctors of medicine holding a degree of M.D., and one doctor of osteopathy holding the degree of D.O. ~~Such~~ The members of the board ~~must~~ shall be licensed in the State of South Dakota, and ~~must~~ shall be skilled and capable physicians in good standing.

Section 3. That § 36-4-2.1 be amended to read as follows:

36-4-2.1. The membership of the Board of Examiners shall include ~~one lay member who is a user~~ two lay members who are users of the services regulated by the board. ~~The term lay member who is a user refers to a person who is not licensed by the board but where practical uses the service licensed, and the meaning shall be liberally construed to implement the purpose of this section. The lay member shall be appointed by the Governor and~~ One lay member may be a nonphysician health care professional licensed by the board. The Governor shall appoint the lay members. The lay members shall have the same term of office as other members of the board.

Section 4. That § 36-4-34 be amended to read as follows:

36-4-34. ~~Whenever it shall appear~~ If it appears from evidence satisfactory to the Board of Examiners that any person has violated the provisions of this chapter or that any licensee under this chapter has been guilty of unprofessional or dishonorable conduct or is ~~grossly~~ incompetent, the board ~~shall have the right to~~ may apply for an injunction in any court of competent jurisdiction to restrain ~~such~~ the person or licensee from continuing to practice medicine, osteopathy, surgery, or obstetrics in any of their branches in this state. Application for an injunction is an alternate to criminal proceedings, and the commencement of one proceeding by the board constitutes an election.

Section 5. That § 36-4A-3.1 be amended to read as follows:

1 36-4A-3.1. The board shall appoint a physician assistant advisory committee composed of
2 three physician assistants. Each committee member shall serve a term of three years, ~~except~~
3 ~~initial appointees whose terms.~~ However, the terms of initial appointees shall be staggered so
4 that no more than one member's term expires in one year. ~~A~~ No committee member may ~~not~~ be
5 appointed to more than ~~two~~ three consecutive full terms. If a vacancy occurs, the board shall
6 appoint a person to fill the unexpired term. The appointment of a member to an unexpired term
7 is not considered a full term. The committee shall meet at least annually or as deemed necessary
8 to conduct business. The advisory committee shall assist the board in evaluating standards of
9 physician assistant care and the regulation of physician assistants pursuant to this chapter. The
10 committee shall also make recommendations to the board regarding rules promulgated pursuant
11 to this chapter.

12 Section 6. That § 36-4A-37 be amended to read as follows:

13 36-4A-37. The South Dakota State Board of Medical and Osteopathic Examiners ~~shall have~~
14 ~~the right to~~ may deny the issuance or renewal of a license or suspend or revoke the license of
15 any physician assistant issued under this chapter upon satisfactory proof, in compliance with
16 chapter 1-26, of such person's:

- 17 (1) ~~Gross incompetence~~ Incompetence or unprofessional or dishonorable conduct as
18 defined in § 36-4-30;
- 19 (2) Violation of this chapter in any respect;
- 20 (3) Failure to notify the board, in writing, of the termination of the contract with ~~his~~ the
21 person's supervising physician within seven days after ~~such~~ the termination;
- 22 (4) Rendering medical services beyond the specific tasks allowed to the physician
23 assistant; or
- 24 (5) Rendering medical services without supervision of a physician as required by law and

1 the rules ~~and regulations~~ of the board.

2 Section 7. That chapter 36-4B be amended by adding thereto a NEW SECTION to read as
3 follows:

4 The board shall appoint an advanced life support personnel advisory committee composed
5 of four members as follows:

- 6 (1) One emergency medical technician-intermediate/85;
- 7 (2) One emergency medical technician-intermediate/99;
- 8 (3) One emergency medical technician-paramedic; and
- 9 (4) One emergency room physician.

10 Each committee member shall serve a term of three years. However, the terms of initial
11 appointees shall be staggered so that no more than two members' terms expire in one year. No
12 committee member may be appointed to more than three consecutive full terms. If a vacancy
13 occurs, the board shall appoint a person to fill the unexpired term. The appointment of a person
14 to an unexpired term is not considered a full term. The committee shall meet at least annually
15 or as deemed necessary to conduct business. The advisory committee shall assist the board in
16 evaluating standards of care for advanced life support personnel and the regulation of advanced
17 life support personnel pursuant to this chapter. The committee shall also make recommendations
18 to the board regarding rules promulgated pursuant to this chapter.

19 Section 8. That § 36-4B-31 be amended to read as follows:

20 36-4B-31. The board may deny the issuance or renewal of a license or suspend or revoke the
21 license of any advanced life support personnel issued under this chapter upon satisfactory proof
22 of ~~such individual's gross~~ the person's incompetence, or unprofessional or dishonorable conduct
23 as defined in § 36-4-30 or proof of a violation of this chapter.

24 Section 9. That § 36-4C-4 be amended to read as follows:

36-4C-4. The board shall appoint a Respiratory Care Practitioners' Advisory Committee composed of five members as follows:

- (1) Two registered respiratory therapists;
- (2) Two certified respiratory therapists; and
- (3) A physician licensed pursuant to chapter 36-4 who practices as a pulmonologist.

~~Committee members shall be selected from a list of nominees by the South Dakota affiliate of the American Association for Respiratory Care.~~ Each committee member shall serve a term of three years, ~~except. However, the terms of initial appointees whose terms~~ shall be staggered so that no more than two members' terms expire in any one year. No committee member may be appointed to more than three consecutive full terms. If a vacancy occurs, the board shall appoint a person to fill the unexpired term. The appointment of a person to an unexpired term is not considered a full term. The committee shall meet at least annually or as deemed necessary to conduct business.

The advisory committee shall assist the board in evaluating the qualifications of applicants for licensure and reviewing the examination results of applicants. The committee shall also make recommendations to the board regarding rules promulgated pursuant to this chapter.

Section 10. That § 36-4C-16 be amended to read as follows:

36-4C-16. A proceeding for cancellation, revocation, or suspension of a license or temporary permit may be initiated if the board has written information that any person may have been guilty of any misconduct pursuant to § 36-4C-15 or is guilty of ~~gross~~ incompetence or unprofessional or dishonorable conduct.

Section 11. That § 36-5-2 be amended to read as follows:

36-5-2. Any person who ~~shall practice or attempt~~ practices or attempts to practice chiropractic or who ~~shall use~~ uses the title chiropractor or any word or title having a tendency

1 to induce any person to believe that ~~he~~ the person is a chiropractor without first having secured
2 a license from the Board of Chiropractic Examiners ~~and secured an annual certificate of~~
3 ~~registration from the South Dakota Chiropractors Association and or~~ an annual license renewal
4 from the Board of Chiropractic Examiners is guilty of a Class 1 misdemeanor. The state's
5 attorneys shall enforce the provisions of this chapter within their respective counties.

6 Section 12. That § 36-5-3 be amended to read as follows:

7 36-5-3. The Board of Chiropractic Examiners shall be composed of one lay person and four
8 members who are chiropractors, and appointed by the Governor for terms of three calendar
9 years. ~~Any~~ No member may serve more than three consecutive full terms. The Governor shall,
10 by appointment, fill any vacancy occurring in ~~such board shall be filled by appointment by the~~
11 ~~Governor~~ the board. The appointment to an unexpired term is not considered a full term. The
12 Governor may stagger terms to enable the board to have different terms expire each year.

13 Section 13. That § 36-5-14.1 be amended to read as follows:

14 36-5-14.1. Each person receiving a license under the provisions of this chapter shall procure
15 from the secretary-treasurer of the board on or before the thirty-first day of December of each
16 year, a renewal of license. The renewal shall be issued by the secretary-treasurer upon payment
17 of the fee to be fixed in a rule, promulgated by the board pursuant to chapter 1-26, not exceeding
18 the sum of three hundred dollars. The renewal license shall be in the form of a receipt
19 acknowledging payment of the required fee and signed by the secretary-treasurer ~~and shall be~~
20 ~~issued only to persons certified by the South Dakota Chiropractors Association as members in~~
21 ~~good standing as defined in § 36-5-18.~~

22 Section 14. That § 36-5-16 be amended to read as follows:

23 36-5-16. The board may, in compliance with chapter 1-26, refuse to grant a license to any
24 person otherwise qualified, and may revoke the license of any chiropractor who is not of good

1 moral character, ~~or~~; who solicits professional patronage by agents, ~~or~~; who is guilty of gross
2 unprofessional conduct, ~~or~~ incompetency, ~~or~~ habitual intoxication ~~or~~, the use of narcotics, ~~or~~ of
3 fraud, or deception, ~~or~~; who shall be convicted of a felony; ~~;~~ or who ~~shall practice~~ practices
4 contrary to the provisions of this chapter or the rules ~~and regulations~~ of the board. The board
5 shall define by rule the foregoing grounds for revocation and refusal.

6 Section 15. That § 36-5-18 be amended to read as follows:

7 36-5-18. The South Dakota Chiropractors Association, composed of ~~all~~ the licensed
8 chiropractors in this state, ~~hereby reconstituted to electing to participate, shall~~ improve, promote,
9 and further, by educational work, the qualifications of its members and the art, science, and
10 practice of chiropractic, ~~shall issue an annual certificate of registration upon such terms as it~~
11 ~~shall provide to each member, and make a report to the secretary of the Department of~~
12 ~~Commerce and Consumer Affairs. The association shall certify to the Board of Chiropractic~~
13 ~~Examiners annually on January fifteenth, the names of all chiropractors who are current on~~
14 ~~payment of dues.~~

15 ~~—The association may enact bylaws to regulate its affairs.~~

16 Section 16. That § 36-6A-2 be repealed.

17 ~~—36-6A-2. Any appointment for a full term under § 36-6A-1 or to fill any vacancy among the~~
18 ~~professional members on the Board of Dentistry shall be made by the Governor. A list of~~
19 ~~dentists and dental hygienists recommended by the South Dakota State Dental Association and~~
20 ~~South Dakota Dental Hygienists Association, respectively, shall be furnished to the Governor~~
21 ~~at least ninety days prior to the expiration of an applicable term, or, in cases of vacancies, within~~
22 ~~sixty days after the occurrence of such vacancy. Such list shall contain not less than two~~
23 ~~professional members for each membership to be filled.~~

24 Section 17. That § 36-6A-4 be amended to read as follows:

1 36-6A-4. No member of the board may serve more than ~~two~~ three consecutive full terms.
2 ~~Appointments to such board shall be made by the Governor~~ However, appointment of a person
3 to an unexpired term is not considered a full term for this purpose. The Governor shall make
4 appointments to the board for terms of ~~five~~ three years. Each member shall hold office until a
5 successor is appointed and qualified. ~~Any vacancy shall be filled by appointment of the~~
6 ~~Governor~~ The Governor shall, by appointment, fill any vacancy for the balance of the unexpired
7 term. The Governor may stagger terms to enable the board to have different terms expire each
8 year. Any member appointed to the board prior to July 1, 2005, shall serve the five-year term
9 to which the member was originally appointed. Any member appointed to the board after July 1,
10 2005, shall serve a three-year term.

11 Section 18. That § 36-7-3 be amended to read as follows:

12 36-7-3. The State Board of Examiners in Optometry ~~shall consist~~ consists of four members
13 appointed by the Governor, three of whom shall be fully qualified and licensed to prescribe and
14 administer diagnostic and therapeutic pharmaceutical agents under this chapter. Each member
15 ~~must~~ shall have been a resident of this state actually engaged in the practice of optometry at least
16 five years preceding the appointment. The term of each member is three years commencing on
17 July first, ~~and all vacancies shall be filled by appointment of the Governor.~~ The Governor shall,
18 by appointment, fill any vacancy. No member may serve more than three consecutive full terms.
19 The appointment of a person to an unexpired term is not considered a full term. No member of
20 any optical school or college, or instructor in optometry, or person connected therewith, or any
21 jobber or jobber's representative, is eligible for the board.

22 Section 19. That § 36-7-24 be amended to read as follows:

23 36-7-24. The Board of Examiners, in compliance with chapter 1-26, may revoke the
24 certificate of any registrant for any one, or any combination, of the following causes:

- 1 (1) Conviction of a felony, as shown by a certified copy of the record of the court of
- 2 conviction;
- 3 (2) Obtaining of, or an attempt to obtain, a certificate of registration by fraudulent
- 4 misrepresentation;
- 5 (3) ~~Gross malpractice~~ Malpractice;
- 6 (4) Continued practice by a person knowingly having an infectious or contagious disease;
- 7 (5) Habitual drunkenness or habitual addiction to the use of morphine, cocaine, or other
- 8 habit-forming drugs;
- 9 (6) Being guilty of "unprofessional conduct."

10 Section 20. That § 36-8-2 be amended to read as follows:

11 36-8-2. The State Board of Podiatry Examiners shall include three professional members
12 appointed by the Governor, each of whom shall be a resident podiatrist of this state; ~~the~~. The
13 term of each shall be three years, commencing on the first day of July. ~~All vacancies shall be~~
14 ~~filled by appointment by the Governor.~~ No member may serve more than three consecutive full
15 terms. The Governor shall, by appointment, fill any vacancy. The appointment of a person to
16 an unexpired term is not considered a full term.

17 Section 21. That § 36-9-9 be amended to read as follows:

18 36-9-9. The term of office for the members of the Board of Nursing is ~~four~~ three years and
19 expires on July first. Each member shall serve until ~~the member's~~ a successor has been
20 appointed and qualified. ~~A~~ No member may ~~not~~ be appointed to more than ~~two~~ three
21 consecutive full terms. However, appointment of a person to an unexpired term is not
22 considered a full term for this purpose.

23 At the expiration of a term, or if a vacancy occurs, the Governor shall appoint a new board
24 member. The Governor may stagger terms to enable the board to have different terms expire

1 each year. Any member appointed to the board prior to July 1, 2005, shall serve the four-year
2 term to which the member was originally appointed. Any member appointed to the board after
3 July 1, 2005, shall serve a three-year term.

4 Section 22. That § 36-9-49 be amended to read as follows:

5 36-9-49. In compliance with chapter 1-26, the Board of Nursing may deny an application
6 for licensure or certification or may deny, revoke, or suspend a license or certificate and may
7 take other disciplinary or corrective action it considers appropriate in addition to or in lieu of
8 such an action upon proof that the applicant, licensee, or certificate holder has:

- 9 (1) Committed fraud, deceit, or misrepresentation in procuring or attempting to procure
10 licensure or certification;
- 11 (2) Been convicted of a felony. The conviction of a felony means the conviction of any
12 offense which, if committed within the State of South Dakota, would constitute a
13 felony under its laws;
- 14 (3) Engaged in the practice of nursing under a false or incorrect name or under a
15 fictitious or assumed business name which has not been registered pursuant to
16 chapter 37-11 or impersonated another licensee or certificate holder of a like or
17 different name;
- 18 (4) Become addicted to the habitual use of intoxicating liquors or controlled drugs as
19 defined by chapter 34-20B to such an extent as to result in incapacitation from the
20 performance of professional duties;
- 21 (5) Negligently, willfully, or intentionally acted in a manner inconsistent with the health
22 or safety of persons entrusted to his or her care;
- 23 (6) Had a license, certificate, or privilege to practice as a registered nurse, licensed
24 practical nurse, certified registered nurse anesthetist, or clinical nurse specialist

denied, revoked, or suspended or had other disciplinary action taken in another state,
territory, or foreign country;

(7) Violated any provisions of this chapter or the rules promulgated under it;

(8) Aided or abetted an unlicensed or uncertified person to practice nursing;

(9) Engaged in the practice of nursing during a time his or her license or certificate is
lapsed, on inactive status, suspended, or revoked;

(10) Been guilty of gross incompetence or unprofessional or dishonorable conduct;

(11) Exercised influence within the nurse-patient relationship for the purpose of engaging
a patient in sexual activity. For the purpose of this subdivision, the patient is
presumed incapable of giving free, full, and informed consent to sexual activity with
the nurse; or

(12) Engaged in gross sexual harassment or sexual contact.

Section 23. That § 36-9A-5.1 be amended to read as follows:

36-9A-5.1. The Board of Nursing shall appoint an advanced practice nurse advisory
committee composed of two certified nurse midwives and four certified nurse practitioners.
Committee members shall be selected from a list of nominees by the Board of Nursing. Each
committee member shall serve a term of three years;~~except.~~ However, the terms of initial
appointees whose terms shall be staggered so that no more than two members' terms expire in
one year. ~~A~~ No committee member may ~~not~~ be appointed to more than ~~two~~ three consecutive
terms. If a vacancy occurs, the board shall appoint a person to fill the unexpired term. The
appointment of a person to an unexpired term is not considered a full term. The committee shall
meet at least annually, or as deemed necessary, to conduct business. The advisory committee
shall assist the boards in evaluating standards of advanced practice nursing care and the
regulation of nurse practitioners and nurse midwives pursuant to this chapter. The committee

1 shall also make recommendations to the boards regarding rules promulgated pursuant to this
2 chapter.

3 Section 24. That § 36-9A-30 be amended to read as follows:

4 36-9A-30. The proceedings for revocation or suspension of a license may be initiated if the
5 boards have information that any person may have been guilty of any misconduct as provided
6 in § 36-9A-29, or is guilty of ~~gross~~ incompetence or unprofessional or dishonorable conduct.

7 Section 25. That § 36-10-19 be amended to read as follows:

8 36-10-19. ~~There is hereby established~~ The board shall appoint a physical therapy committee,
9 composed of three physical therapists, which shall assist the Board of Examiners in conducting
10 examinations of persons applying for a license to practice physical therapy ~~and~~. The committee
11 shall assist the Board of Examiners on all matters pertaining to the licensure, practice, and
12 discipline of all persons licensed to practice physical therapy in the State of South Dakota, or
13 the making or abolishing of rules and regulations pertaining to physical therapy. Each committee
14 member shall serve a term of three years. No member may serve more than three consecutive
15 full terms. If a vacancy occurs, the board shall appoint a person to fill the unexpired term. The
16 appointment of a person to an unexpired term is not considered a full term. The committee shall
17 meet at least annually or as deemed necessary to conduct business.

18 Section 26. That § 36-10-20 be repealed.

19 ~~— 36-10-20. The South Dakota Physical Therapy Association shall at any regular or special~~
20 ~~meeting held within six months prior to the existence of any vacancy on the committee,~~
21 ~~nominate two persons for each vacancy, on the committee. All persons appointed to such board~~
22 ~~after the first members shall serve for a period of three years. The Board of Examiners shall~~
23 ~~select from the list of nominees presented to it, as certified by the secretary of the South Dakota~~
24 ~~Physical Therapy Association, persons to serve on such committee.~~

Section 27. That § 36-10-22 be repealed.

~~36-10-22. In the event any vacancy shall arise on such committee by reason of death, retirement, removal from this state, or otherwise of any member serving on such committee, such vacancy shall be filled in the same manner as original appointments thereto are made and the term of the member chosen to fill a vacancy shall be for the remainder of the unexpired term of the committee member he is replacing.~~

Section 28. That § 36-10-39 be amended to read as follows:

36-10-39. The Board of Examiners may cancel, revoke, or suspend the license of any physical therapist or the certificate of any physical therapist assistant issued under this chapter upon satisfactory proof of such a licensee's or certificate holder's gross incompetence, or unprofessional or dishonorable conduct, or proof of a violation of this chapter in any respect.

Section 29. That § 36-10-41 be amended to read as follows:

36-10-41. The proceedings for cancellation, revocation, or suspension of a license may be initiated when the Board of Examiners has information that any person, persons, firms, or corporation may have been guilty of any misconduct as provided in § 36-10-40 or is guilty of gross incompetence or unprofessional or dishonorable conduct.

Section 30. That § 36-10B-4 be amended to read as follows:

36-10B-4. The board shall appoint a nutrition and dietetics advisory committee composed of five members. The members shall be registered dietitians or qualified nutritionists. ~~The committee members shall be selected from a list of nominees provided by the South Dakota Dietetic Association.~~ Each committee member shall serve a term of three years, ~~except.~~ However, the terms of initial appointees whose terms shall be staggered so that no more than two members' terms expire in any one year. No committee member may be appointed to more than three consecutive full terms. If a vacancy occurs, the board shall appoint a person to fill the

1 unexpired term. The appointment of a person to an unexpired term is not considered a full term.

2 The committee may assist the board in evaluating the qualifications of applicants for
3 licensure. The committee may make recommendations to the board regarding rules promulgated
4 pursuant to this chapter.

5 Section 31. That § 36-11-3 be amended to read as follows:

6 36-11-3. ~~The~~ Those registered pharmacists of this state electing to participate shall constitute
7 an association under the name and title of the South Dakota Pharmacists Association, ~~the~~. The
8 purpose of ~~which shall be~~ the association is to serve as the state professional society of
9 pharmacists which represents the profession of pharmacy, enhances the public's awareness of
10 pharmacy, and serves the best interest of public health and pharmacy. The South Dakota
11 Pharmacists Association shall be conducted as a nonprofit corporation pursuant to the terms of
12 its articles of incorporation. The members of the association who have secured a current annual
13 certificate of registration to practice pharmacy in this state and who have elected to participate
14 in the association are entitled to all of the rights and privileges of the association and may vote,
15 serve as an officer or director of the association, and participate in all of the meetings of the
16 association. The association shall hold an annual meeting at such time and place as it
17 determines. ~~It shall report annually to the Governor, recommending the names of at least three~~
18 ~~members who are practicing pharmacists rendering pharmaceutical services to the general public~~
19 ~~in this state and otherwise qualified to be appointed as members of the State Board of Pharmacy.~~

20 Section 32. That § 36-11-4 be amended to read as follows:

21 36-11-4. The State Board of Pharmacy shall include three professional members who shall
22 hold their offices for terms of three years or until their successors are appointed and qualified.
23 ~~On or before the first day of October of each year, or whenever a vacancy shall occur among the~~
24 ~~professional members of such board, the Governor shall appoint a licentiate in pharmacy who~~

1 ~~shall be a member of the South Dakota Pharmacists Association as a member of such board or~~
2 ~~to fill a vacancy therein. The Governor shall have the authority to~~ No member may serve more
3 than three consecutive full terms. The appointment of a person to an unexpired term is not
4 considered a full term. The Governor may remove any member of the board for just cause.

5 Section 33. That § 36-11-6 be amended to read as follows:

6 36-11-6. ~~The association shall annually receive all fees received for renewal of certificates~~
7 ~~of registration as a pharmacist in this state. The board may, upon receipt, pay to the South~~
8 Dakota Pharmacists Association eighty percent of all fees the board receives for renewals of
9 certificates of registration as a pharmacist. The association may shall use the funds for ~~payment~~
10 ~~of expenses of the association, including the following association activities to benefit the public~~
11 and the profession: continuing education, matters related to registration standards for
12 pharmacists, professional service standards, and general operating expenses related to the
13 activities enumerated in this section. The association shall also use funds received to pay any
14 legislated assessment to support a diversion program for chemically impaired pharmacists.
15 Expenditures of funds shall be approved by the president and treasurer of the association. The
16 association shall annually file in the office of the board an itemized statement of the receipts of
17 the association and disbursements from the receipts.

18 Section 34. That § 36-11-9 be amended to read as follows:

19 36-11-9. ~~It shall be the duty of the~~ The Board of Pharmacy to shall report annually to the
20 Governor as provided by law for state officers and boards, ~~and to the South Dakota~~
21 ~~Pharmaceutical Association.~~

22 Section 35. That § 36-11-23 be amended to read as follows:

23 36-11-23. Each pharmacist shall annually by October first each year, pay to the ~~South~~
24 ~~Dakota Pharmacists Association board~~ a registry fee to be fixed by ~~the association and adopted~~

1 ~~by the board in compliance with chapter 1-26, not to exceed one hundred fifty dollars, for which~~
2 ~~the pharmacist shall receive from.~~ Upon payment of the fee by a pharmacist, the Board of
3 ~~Pharmacy a renewal of the~~ shall renew the pharmacist's certificate of registration. Any
4 pharmacist who fails to pay the renewal fee by the due date is subject to suspension of certificate
5 by the board in compliance with chapter 1-26. Any suspended certificate may be reinstated if
6 all delinquent fees have been paid, plus a penalty of twenty-five dollars, and the Board of
7 Pharmacy has approved the application for reinstatement.

8 Section 36. That § 36-12-3 be amended to read as follows:

9 36-12-3. ~~There is hereby created~~ The Governor shall appoint a State Board of Veterinary
10 Medical Examiners ~~to be appointed by the Governor of the State of South Dakota,~~ which shall
11 include three ~~reputable~~ veterinarians ~~who.~~ Each veterinarian shall be graduated a graduate from
12 a college authorized by law to confer degrees of veterinary medicine, ~~and having with~~
13 educational standards equal to those approved by the American Veterinary Medical Association,
14 and each of whom veterinarian shall be licensed and registered under this chapter and actively
15 engaged in the practice of veterinary medicine in the state for a period of five years preceding
16 the appointment. Appointments shall be made for the term of three years. No member of this
17 board shall may serve more than six ~~consecutive years~~ three full terms. The appointment of a
18 person to an unexpired term is not considered a full term.

19 Section 37. That § 36-12-5 be repealed.

20 ~~—36-12-5. The South Dakota State Veterinary Medical Society shall at each annual meeting~~
21 ~~nominate twice the number of veterinarians to be appointed that year on the Board of Veterinary~~
22 ~~Medical Examiners. Such names shall be certified to the Governor by the secretary of such~~
23 ~~society, and the appointment shall be made from the nominees so submitted. If the society fails~~
24 ~~to provide nominees as provided herein then the Governor may appoint from licensed and~~

1 ~~registered members of the veterinary profession in good standing in South Dakota without~~
2 ~~restriction.~~

3 Section 38. That § 36-12-6 be amended to read as follows:

4 36-12-6. The Governor shall remove any member of the Board of Veterinary Examiners
5 upon proper showing of ~~gross~~ neglect of duty or for corrupt conduct in office or any other
6 misfeasance; or malfeasance ~~therein~~ in office.

7 Section 39. That § 36-12-22 be amended to read as follows:

8 36-12-22. The State Board of Veterinary Medical Examiners may, in compliance with
9 chapter 1-26, either refuse to issue a license or refuse to issue a certificate of registration or
10 suspend or revoke a license and certificate of registration upon any of the following grounds:

- 11 (1) Fraud or deception in procuring the license;
- 12 (2) The publication or use of any untruthful or improper statement, or representation,
13 with a view of deceiving the public, or any client or customer in connection with the
14 practice of veterinary medicine;
- 15 (3) Habitual intemperance in the use of intoxicating liquors, or habitual addiction to the
16 use of morphine, cocaine, or other habit-forming drugs; or entry of a plea of guilty
17 to, or nolo contendere to, or conviction of a violation of any federal or state law
18 relating to controlled drugs or substances;
- 19 (4) Immoral, unprofessional, or dishonorable conduct manifestly disqualifying the
20 licensee from practicing veterinary medicine;
- 21 (5) ~~Gross malpractice~~ Malpractice, including failure to furnish to the board, upon written
22 application by it, any report or information relating thereto;
- 23 (6) The employment of an unlicensed person to perform work which under this chapter
24 can lawfully be done only by persons licensed to practice veterinary medicine;

- 1 (7) Fraud or dishonest conduct in applying or reporting diagnostic biological tests or in
2 issuing health certificates;
- 3 (8) Failure to keep one's premises in a reasonably clean and sanitary condition and failure
4 to use reasonably sanitary methods in the practice of veterinary medicine;
- 5 (9) The use, prescription, or sale of any veterinary prescription drug in the absence of a
6 valid veterinary client-patient relationship;
- 7 (10) Professional incompetence which constitutes a deviation from the statewide standard
8 of competence, which is that minimum degree of skill and knowledge necessary for
9 the performance of characteristic tasks of a veterinarian in at least a reasonably
10 effective way.

11 Section 40. That § 36-13-1 be amended to read as follows:

12 36-13-1. The Abstracters' Board of Examiners shall be composed of five members appointed
13 by the Governor. Four members of the board shall be abstracters who have been qualified to do
14 the business of abstracting under § 36-13-8 for five years prior to the date of their appointment.
15 Four of these abstracter members shall be members of the South Dakota Land Title Association.
16 The members may not be all of the same political party, and their terms shall be for ~~four~~ three
17 years. Any member appointed to the board prior to July 1, 2005, shall serve the four-year term
18 to which the member was originally appointed. Any member appointed to the board after July 1,
19 2005, shall serve a three-year term. No board member may serve more than three consecutive
20 full terms. Members of the board shall qualify by taking the oath of office provided by law for
21 public officers.

22 ~~Vacancies~~ The Governor shall, by appointment, fill any vacancy among the professional
23 members of the board ~~shall be filled by appointment~~ for the unexpired term ~~by the Governor~~
24 from abstracters qualified as provided in this section. Any appointment to an unexpired term is

1 not considered a full term.

2 Section 41. That § 36-13-1.1 be amended to read as follows:

3 36-13-1.1. The membership of the Abstracters' Board of Examiners shall include one lay
4 member who is a user of the services regulated by the board. The term, lay member who is a
5 user, refers to a person who is not licensed by the board but, where practical, uses the service
6 licensed, ~~and the meaning.~~ The term shall be liberally construed to implement the purpose of
7 this section. ~~The lay member shall be appointed by the Governor and~~ Governor shall appoint
8 the lay member. The lay member shall have the same term of office as other members of the
9 board. No lay member of the board may serve more than three consecutive full terms.

10 Section 42. That § 36-14-2 be amended to read as follows:

11 36-14-2. ~~The Governor shall appoint a Board of Barber Examiners herein established, which~~
12 ~~shall include three professional members appointed by the Governor, the.~~ The term of each shall
13 be three years commencing on the first day of July. No member may serve more than three
14 consecutive full terms. However, appointment to fill an unexpired term is not considered a
15 complete term for this purpose. Each of these members shall be a practical barber who has
16 followed the occupation of barber in this state for at least five years immediately preceding ~~his~~
17 the barber's appointment. The Governor may remove a member for cause, and shall fill all
18 vacancies. ~~Members~~ Any member appointed to fill ~~vacancies~~ a vacancy shall serve ~~during the~~
19 remainder of the unexpired term ~~of their predecessors.~~ The Governor may stagger the terms to
20 enable the board to have different terms expire each year.

21 Section 43. That § 36-14-2.1 be amended to read as follows:

22 36-14-2.1. The membership of the Board of Barber Examiners shall include one lay member
23 who is a user of the services regulated by the board. The term, lay member who is a user, refers
24 to a person who is not licensed by the board but, where practical, uses the service licensed, ~~and~~

1 ~~the meaning. The term~~ shall be liberally construed to implement the purpose of this section. ~~The~~
2 ~~lay member shall be appointed by the Governor and~~ The Governor shall appoint the lay member.
3 The lay member shall have the same term of office and is subject to the same limits and
4 conditions as other members of the board.

5 Section 44. That § 36-14-32 be amended to read as follows:

6 36-14-32. The Board of Barber Examiners may refuse to issue or renew, or may suspend or
7 revoke, any certificate of registration for any of the following causes:

- 8 (1) Conviction of a felony;
- 9 (2) ~~Gross malpractice~~ Malpractice or ~~gross~~ incompetency;
- 10 (3) Continued practice by a person knowingly having an infectious or contagious disease;
- 11 (4) Advertising by means of knowingly false or deceptive statements;
- 12 (5) Advertising, practicing, or attempting to practice under a trade name other than one's
13 own;
- 14 (6) Drunkenness, or addiction to the use of habit-forming drugs;
- 15 (7) Immoral or unprofessional conduct;
- 16 (8) The commission of any of the offenses described in § 36-14-36.

17 Section 45. That § 36-15-3 be amended to read as follows:

18 36-15-3. ~~There is created a~~ The Cosmetology Commission ~~which~~ shall perform all functions
19 exercised by the former State Board of Cosmetology. The Cosmetology Commission ~~shall~~
20 ~~consist~~ consists of five members to be appointed by the Governor for a term of ~~four~~ three years;
21 ~~not all of whom shall.~~ No member may serve more than three consecutive full terms. However,
22 appointment to fill an unexpired term is not considered a complete term for this purpose. Not
23 all of the members may be of the same political party. Three members ~~must~~ shall be currently
24 licensed as cosmetologists in this state at the time of their appointment. Two members shall be

1 lay people. ~~The terms of members who are first appointed after the effective date of this order~~
2 ~~shall be: two appointed for a term of one year; two appointed for a term of two years; and one~~
3 ~~for a term of four years, and such initial terms shall be designated by the Governor. Any member~~
4 ~~appointed to fill a vacancy arising from other than the natural expiration of a term shall serve~~
5 ~~for only the unexpired portion of the term. The Governor may stagger the terms to enable the~~
6 ~~commission to have different terms expire each year. Any member appointed to the commission~~
7 ~~prior to July 1, 2005, shall serve the four-year term to which the member was originally~~
8 ~~appointed. Any member appointed to the commission after July 1, 2005, shall serve a three-year~~
9 ~~term.~~ Each member of the commission shall ~~be required to~~ take the oath of office as provided
10 by law for public officials.

11 Section 46. That § 36-15-58 be amended to read as follows:

12 36-15-58. The proceedings for cancellation, revocation, or suspension of a license may be
13 initiated when the cosmetology commission has information that any person may have been
14 guilty of any misconduct as provided in § 36-15-56, or is guilty of ~~gross~~ incompetence,
15 negligence, or unprofessional or dishonorable conduct.

16 Section 47. That § 36-16-3 be amended to read as follows:

17 36-16-3. ~~There is created a~~ The State Electrical Commission ~~which~~ shall perform all
18 functions exercised by the former State Electrical Board. The State Electrical Commission ~~shall~~
19 ~~consist~~ consists of seven members to be appointed by the Governor for a term of ~~four~~ three
20 ~~years, not all of whom.~~ No member may serve more than three consecutive full terms. However,
21 appointment to fill an unexpired term is not considered a complete term for this purpose. Not
22 all of the members shall be of the same political party. ~~The terms of members who are first~~
23 ~~appointed after the effective date of this order shall be: one appointed for a term of one year; one~~
24 ~~appointed for a term of two years; two appointed for a term of three years; and one for a term~~

1 of four years, and such initial terms shall be designated by the Governor. Any member appointed
2 to fill a vacancy arising from other than the natural expiration of a term shall serve for only the
3 unexpired portion of the term. Three of the members appointed shall, where possible, be
4 selected from names submitted by private utility companies, rural electrical cooperatives,
5 electrical inspectors, electrical contractors, and journeymen electricians. The Governor may
6 stagger the terms to enable the commission to have different terms expire each year. Any
7 member appointed to the commission prior to July 1, 2005, shall serve the four-year term to
8 which the member was originally appointed. Any member appointed to the commission after
9 July 1, 2005, shall serve a three-year term. One member shall represent an electric utility, one
10 member shall be a licensed electrical contractor, one member shall be a licensed electrician with
11 at least a journeyman level license and one member shall have fire safety expertise.

12 Section 48. That § 36-16-4 be amended to read as follows:

13 36-16-4. The Governor shall appoint one member of the State Electrical Commission who
14 shall be involved in the education of electrical engineers. This member shall serve without
15 compensation and be appointed biennially.

16 Section 49. That § 36-18A-14 be amended to read as follows:

17 36-18A-14. The Board of Technical Professions is hereby created to administer the
18 provisions of this chapter. Each member of the board shall receive a certificate of appointment
19 from the Governor; and shall file with the secretary of state a written oath for the faithful
20 discharge of the member's official duties. The board shall consist of seven members to be
21 appointed by the Governor for a term of four three years. In implementing the four-year terms,
22 the Governor shall vary the terms to enable the board to have no more than two terms expire in
23 any one year. No member may serve more than three consecutive full terms. However,
24 appointment to fill an unexpired term is not considered a complete term for this purpose. The

1 board shall be composed of two professional engineers, two architects, two land surveyors, and
2 one member from the public. ~~Members may be reappointed to succeed themselves. A member~~
3 ~~shall hold over the expiration of a term until a successor is duly appointed and qualified. The~~
4 Governor may stagger the terms to enable the board to have different terms expire each year.
5 Any member appointed to the board prior to July 1, 2005, shall serve the four-year term to
6 which the member was originally appointed. Any member appointed to the board after July 1,
7 2005, shall serve a three-year term.

8 Section 50. That § 36-18A-56 be amended to read as follows:

9 36-18A-56. The board may take action without proof of actual injury on the following
10 violations:

- 11 (1) Has violated any statute, rule, or order that the board has issued or is empowered to
12 enforce;
- 13 (2) Has engaged in conduct or acts that are fraudulent, deceptive, or dishonest whether
14 or not the conduct or acts relate to professional practice;
- 15 (3) Has engaged in conduct or acts that are ~~grossly~~ negligent, incompetent, reckless, or
16 otherwise in violation of established standards related to that person's professional
17 practice;
- 18 (4) Has been convicted of or has pleaded guilty or nolo contendere to a felony, whether
19 or not the person admits guilt, or has been shown to have engaged in acts or practices
20 tending to show that the applicant or licensee is incompetent or has engaged in
21 conduct reflecting adversely on the person's ability or fitness to engage in that
22 person's professional practice. A copy of the record of conviction or plea of guilty or
23 nolo contendere is conclusive evidence;
- 24 (5) Has employed fraud or deception in obtaining a license or renewal of a license or in

1 passing all or a portion of the examination;

2 (6) Has had that person's professional license, registration, certificate, right to
3 examination, or other similar rights to practice revoked, suspended, canceled, given
4 probation, limited, censured, reprimanded, or not renewed for cause in any state or
5 territory of the United States, the District of Columbia, or in any foreign country;

6 (7) Failed to meet any requirement for issuance or renewal of the person's license or
7 certificate;

8 (8) Has used or attempted to use as that person's own the certificate or seal of another;

9 (9) Has used or attempted to use an expired, suspended, or revoked license;

10 (10) Has placed that person's seal or signature to a plan, specification, report, plat, or other
11 technical submission or document not prepared by that person or under that person's
12 responsible charge;

13 (11) Aided or assisted another person in violating any provision of this chapter or the rules
14 pertaining to this chapter;

15 (12) Failed to promptly and appropriately provide information requested by the board as
16 a result of a formal or informal complaint to the board which would indicate a
17 violation of this chapter;

18 (13) Has provided false testimony or information to the board;

19 (14) Failed to report known violations of this chapter;

20 (15) Has engaged in the use of untruthful or improbable statements in advertisements;

21 (16) Failed to complete continuing professional development requirements set by the
22 board;

23 (17) Made misleading or untruthful representations in advertisements or published
24 materials;

(18) Falsely used any title, figures, letters, or descriptions to imply licensure;

(19) Is habitually intoxicated or is addicted to the use of alcohol or illegal drugs;

(20) Has committed an act, engaged in conduct, or committed practices that may result in an immediate threat to the public; or

(21) Has provided professional services in technical areas not covered by that person's license or competency.

Section 51. That § 36-19-2 be amended to read as follows:

36-19-2. The State Board of Funeral Service shall include the secretary of health or ~~his~~ the secretary's designee and five professional members who shall be licensed to practice funeral service, ~~appointed by the Governor, provided that no person shall.~~ The Governor shall appoint the professional members of the board. However, no person may be appointed as a professional member of said the board who has not been licensed in this state, as an embalmer and funeral director, or to practice funeral service, for at least five years prior to his appointment. The term of office of appointed members shall be five three years. All vacancies shall be filled by appointment by the Governor. Nominations of three or more qualified candidates for each appointive term of a professional member, or part thereof, shall be filed with the Governor by the South Dakota Embalmers and Funeral Directors Association. The terms of office shall be so arranged that only one professional member's term will expire each year on June thirtieth. The Governor shall, by appointment, fill any vacancy.

The State Board of Funeral Service shall also include two lay members who are users of the services regulated by the board. The term, lay member who is a user, refers to a person who is not licensed by the board but, where practical, uses the service licensed, ~~and the meaning. The~~ term shall be liberally construed to implement the purpose of this section. ~~The lay members shall be appointed by the Governor and, after the initial appointments, both such~~ The Governor

1 shall appoint the lay members. The lay members shall have the same term of office as other
2 members of the board.

3 No board member ~~shall~~ may serve more than ~~two~~ three consecutive full terms ~~on said board;~~
4 ~~any person serving more than three years under an original appointment or to fill a vacancy shall~~
5 ~~be deemed to have served a full term. However, appointment to fill an unexpired term is not~~
6 considered a complete term for this purpose. The Governor may stagger the terms to enable the
7 board to have different terms expire each year. Any member appointed to the board prior to
8 July 1, 2005, shall serve the five-year term to which the member was originally appointed. Any
9 member appointed to the board after July 1, 2005, shall serve a three-year term.

10 Section 52. That § 36-19-38 be amended to read as follows:

11 36-19-38. The State Board of Funeral Service, acting in compliance with chapter 1-26, may
12 refuse to grant, may suspend, or revoke any license if the license holder ~~thereof~~ or the license
13 applicant ~~therefor~~:

- 14 (1) Obtained ~~said~~ the license by fraud or misrepresentation either in applying for ~~said~~ the
15 license or in passing the examination for ~~said~~ the license;
- 16 (2) Uses intoxicants or drugs to such a degree as to render ~~him~~ the person unfit to
17 practice funeral service or funeral directing;
- 18 (3) Has been convicted of a felony or crime involving moral turpitude; ~~provided,~~
19 ~~however, that. However,~~ upon the conviction of a holder of a valid license, of a
20 felony or crime involving moral turpitude, ~~such~~ the conviction shall immediately and
21 automatically revoke ~~such~~ the license;
- 22 (4) Is not a person of good moral character;
- 23 (5) ~~Shall be~~ Is guilty of ~~gross or willful~~ malpractice in the business of funeral service or
24 funeral directing;

1 (6) ~~Shall be~~ Is guilty of willful violation of any section of this chapter, or any rule ~~or~~
2 ~~regulation~~ of the board, or any rule ~~or regulation~~ of the state or any municipal board
3 or department of health governing the disposition, shipment, or transportation of dead
4 human bodies; or ~~shall~~ willfully ~~fail~~ fails to make any report required by law or by
5 the rules ~~or regulations~~ of the board;

6 (7) ~~Shall sign~~ Signs a certificate stating that ~~he~~ the person embalmed or prepared a dead
7 human body for shipment or burial, whereas in fact, someone, other than the person
8 signing ~~said~~ the certificate, embalmed or prepared ~~such~~ the dead human body for
9 shipment or burial;

10 (8) ~~Shall pay or cause~~ Pays or causes to be paid, directly or indirectly, a commission for
11 the securing of business; or, directly or indirectly ~~solicit~~ solicits such business;
12 ~~provided, however, that.~~ However the soliciting of members or the selling of stock
13 in any cooperative burial association ~~shall not be construed as~~ is not a violation of
14 this subdivision.

15 ~~Provided, however, that if~~ If the license as funeral director ~~be~~ is held by a firm, corporation,
16 association, or organization, the provisions of this section ~~shall~~ apply to the members of the
17 board of directors, officers, and employees, as well as to the firm, corporation, association, or
18 organization.

19 Section 53. That § 36-20B-4 be amended to read as follows:

20 36-20B-4. ~~There is created the~~ The South Dakota Board of Accountancy, which has
21 responsibility for the administration and enforcement of this chapter. ~~The board,~~ consists of six
22 members, all of whom shall be residents of this state. Five members shall be appointed by the
23 Governor for ~~four-year~~ three-year terms. Four of the appointed members shall be holders of
24 active certificates and three of these shall be in the practice of public accountancy. One

1 appointed member shall be a lay member who is not a holder of a certificate under this chapter
2 but shall have had professional or practical experience in the use of accounting services and
3 financial statements, so as to be qualified to make judgments about the qualifications and
4 conduct of persons and firms subject to regulation under this chapter. The auditor general shall
5 serve as an ex officio member. ~~Any~~ The Governor shall, by appointment, fill any vacancy
6 ~~occurring during a term shall be filled by appointment by the Governor for the remainder of the~~
7 ~~unexpired term. Upon the expiration of the member's term of office, a member shall continue~~
8 ~~to serve until a successor is appointed and takes office.~~ Any member of the board whose
9 certificate is revoked or suspended shall automatically cease to be a member of the board, ~~and~~
10 ~~the.~~ The Governor may remove any member of the board for cause. No person who has served
11 ~~two successive complete terms is eligible for reappointment, but appointment to fill an~~
12 ~~unexpired term is not considered a complete term for this purpose.~~ The Governor may stagger
13 the terms to enable the board to have different terms expire each year. Any member appointed
14 to the board prior to July 1, 2005, shall serve the four-year term to which the member was
15 originally appointed. Any member appointed to the board after July 1, 2005, shall serve a three-
16 year term. No member may serve more than three consecutive full terms. However, appointment
17 to fill an unexpired term is not considered a complete term for this purpose.

18 Section 54. That § 36-20B-40 be amended to read as follows:

19 36-20B-40. The board may, in accordance with chapter 1-26, revoke any certificate, license,
20 or permit issued pursuant to this chapter or corresponding provisions of prior law or revoke or
21 limit privileges under this chapter; suspend any such certificate, license, or permit, or refuse to
22 renew any such certificate, license, or permit for a period of not more than five years; reprimand,
23 censure, or limit the scope of practice of any licensee; impose an administrative fine not
24 exceeding one thousand dollars, or place any licensee on probation, all with or without terms,

conditions, and limitations, for any one or more of the following reasons:

- (1) Fraud or deceit in obtaining a certificate or permit;
- (2) Cancellation, revocation, suspension, or refusal to renew a certificate, license, or permit to engage in the practice of public accountancy in any other state for any cause;
- (3) Failure, on the part of a holder of a certificate, license, or permit under this chapter or registration under this chapter, or of a certificate, license or permit issued by another state, to maintain compliance with the requirements for issuance or renewal of such certificate, license, permit, or registration or to report changes to the board;
- (4) Revocation or suspension of the right to practice before any state or federal agency;
- (5) Dishonesty, fraud, or ~~gross~~ repeated acts of negligence in the performance of services as a licensee or individual granted privileges under this chapter or in the filing or failure to file one's own income tax returns;
- (6) Violation of any provision of this chapter or rule, promulgated by the board pursuant to chapter 1-26, or violation of professional standards;
- (7) Violation of any rule of professional conduct promulgated by the board pursuant to chapter 1-26;
- (8) Conviction of a felony, or of any crime an element of which is dishonesty or fraud, under the laws of the United States, of this state, or of any other state if the acts involved would have constituted a crime under the laws of this state;
- (9) Performance of any fraudulent act while holding a certificate, license, or permit or privilege issued under this chapter or prior law;
- (10) Any conduct reflecting adversely upon the licensee's fitness to perform services while a licensee, or individual granted privileges under this chapter;

(11) Making any false or misleading statement or verification, in support of an application for a certificate, registration, or permit filed by another; and

(12) Dishonesty or ~~gross~~ repeated acts of negligence in the performance of peer reviews.

In lieu of or in addition to any remedy specifically provided in this section, the board may require of a licensee a peer review conducted in ~~such~~ the manner as the board may specify or satisfactory completion of ~~such~~ the continuing professional education programs as the board may specify, or both.

In any proceeding in which a remedy provided by this section is imposed, the board may also require the respondent licensee to pay the costs of the proceeding.

Section 55. That § 36-21A-14 be amended to read as follows:

36-21A-14. Each member of the commission shall be appointed for a term of ~~four~~ three years. Any member appointed to the commission prior to July 1, 2005, shall serve the four-year term to which the member was originally appointed. Any member appointed to the commission after July 1, 2005, shall serve a three-year term. No member may serve more than three consecutive full terms. Any member appointed to fill a vacancy arising during a commissioner's term shall serve for the unexpired portion of the term. The appointment to an unexpired term is not considered a full term.

Section 56. That § 36-24-4 be amended to read as follows:

36-24-4. The members of the board enumerated in § 36-24-3 shall be appointed by the Governor ~~from a list of at least five audiologists submitted by the South Dakota Academy of Audiology and a list of at least five hearing aid dispensers submitted by the South Dakota Hearing Aid Dispenser's Association, or from a list of nominees submitted by any member of the public.~~ No member of the board may concurrently serve in an elected, appointed, or employed position in any state professional association or governmental regulatory agency

1 which presents a conflict of interest.

2 Section 57. That § 36-24-5 be amended to read as follows:

3 36-24-5. Board members shall be appointed for a term of three years. ~~However, members~~
4 ~~who are on the board as of July 1, 1997, shall continue to serve until replaced by the Governor.~~

5 Each member shall serve until a successor has been appointed.

6 Section 58. That § 36-24-6 be amended to read as follows:

7 36-24-6. No member of the board may serve more than ~~two~~ three consecutive ~~three-year full~~
8 terms or be reappointed to the board until at least one year after the expiration of the member's
9 ~~second~~ third term of office. The appointment to an unexpired term is not considered a full term.

10 The Governor may remove a member of the board for dishonorable conduct, incompetence, or
11 neglect of duty.

12 Section 59. That § 36-25-3 be amended to read as follows:

13 36-25-3. Members of the State Plumbing Commission shall be appointed for terms of ~~four~~
14 three years. ~~The terms of the members who are first appointed after April 14, 1980, shall be: two~~
15 ~~appointed for a term of one year; two appointed for a term of two years; and one appointed for~~
16 ~~a term of four years, and such initial terms shall be designated by the Governor. Any member~~
17 ~~appointed to fill a vacancy arising from other than the natural expiration of a term shall serve~~
18 ~~for only the unexpired portion of the term. The Governor may stagger the terms to enable the~~
19 commission to have different terms expire each year. Any member appointed to the commission
20 prior to July 1, 2005, shall serve the four-year term to which the member was originally
21 appointed. Any member appointed to the commission after July 1, 2005, shall serve a three-year
22 term. No member may serve more than three consecutive full terms. However, appointment to
23 fill an unexpired term is not considered a complete term for this purpose.

24 Section 60. That § 36-26-3 be amended to read as follows:

1 36-26-3. ~~There is hereby created the~~ The South Dakota Board of Social Work Examiners,
2 ~~which shall consist of five~~ consists of seven members, ~~one of whom must be a lay member who~~
3 ~~is a user of the services regulated by the board, two of whom shall be certified social workers,~~
4 ~~one of whom shall be a social worker and one of whom shall be a social work associate, all~~
5 ~~appointed by the Governor. The term "lay member who is a user" refers to a person who is not~~
6 ~~licensed by the board but where practical uses the services licensed, and the meaning shall be~~
7 ~~liberally construed to implement the purpose of this section~~ two of whom shall be lay members,
8 three of whom shall be certified social workers licensed under the provisions of this chapter to
9 engage in private independent practice, two of whom shall be social worker professionals
10 licensed under the provisions of this chapter each with a minimum of two years practice in the
11 State of South Dakota. The Governor shall appoint all of the members.

12 Section 61. That § 36-26-4 be repealed.

13 ~~36-26-4. In order to be eligible for appointment to the board, a person, other than the lay~~
14 ~~member, shall have practiced social work in the State of South Dakota for not less than two~~
15 ~~years, and shall be properly licensed under the provisions of this chapter.~~

16 Section 62. That § 36-26-5 be amended to read as follows:

17 36-26-5. Appointments to the board shall be for terms of three years, beginning on July first.
18 No member of the board may serve for more than three successive full terms; However,
19 appointment of a member to an unexpired term shall be considered is not considered as a full
20 term.

21 Section 63. That § 36-27A-3 be amended to read as follows:

22 36-27A-3. ~~There is created a~~ The Board of Examiners of Psychologists ~~which shall consist~~
23 ~~of five~~ consists of seven members, ~~one~~ two of whom shall be ~~a lay member~~ lay members. The
24 remaining ~~four~~ five members are to be ~~licensed~~ psychologists licensed pursuant to this chapter

1 at the doctoral level for a minimum of two years and broadly representing a cross section of the
2 profession of psychology. ~~All members shall be appointed by the Governor. The credentials of~~
3 each psychologist on the board shall be documented and shall be public record as provided in
4 chapter 1-27. The Governor shall appoint all of the members.

5 Section 64. That § 36-27A-4 be repealed.

6 ~~—36-27A-4. Appointments to the Board of Examiners of Psychologists shall be of individuals~~
7 ~~qualified under § 36-27A-5. Initial psychologist members of the board shall complete an~~
8 ~~application for licensure required of applicants for licensure. The board shall act on the~~
9 ~~application of each initial appointee, with the appointee involved abstaining, in order for~~
10 ~~licensure to be granted to that appointee. The term "lay member" means a person who is not~~
11 ~~licensed by the board but who may use the services of a licensed psychologist, and the meaning~~
12 ~~shall be liberally construed to implement the purpose of this section.~~

13 Section 65. That § 36-27A-5 be repealed.

14 ~~—36-27A-5. To be eligible for appointment to the Board of Examiners of Psychologists, a~~
15 ~~person, other than a lay member, shall have a doctoral degree from a regionally accredited~~
16 ~~university or college in a program in psychology and shall have had a supervised psychological~~
17 ~~internship amounting to not less than one thousand eight hundred hours in duration over a~~
18 ~~period of not more than two consecutive calendar years and shall have engaged in the~~
19 ~~postdoctoral practice of psychology in the State of South Dakota for not less than two years. The~~
20 ~~credentials of each psychologist on the board shall be documented and shall be public record~~
21 ~~as provided in chapter 1-27.~~

22 Section 66. That § 36-27A-7 be amended to read as follows:

23 36-27A-7. The Governor may remove a member of the Board of Examiners of Psychologists
24 for cause. If there is a vacancy on the board caused by the death, resignation, or removal from

1 the state of a member or for any other reason, the Governor shall appoint a new member to serve
2 the unexpired term. No member of the board may serve for more than ~~two~~ three successive full
3 terms. The appointment ~~of a member~~ to an unexpired term is not considered a full term.

4 Section 67. That § 36-28-2 be amended to read as follows:

5 36-28-2. ~~There is hereby created~~ The the South Dakota State Board for Nursing Facility
6 Administrators ~~which shall consist~~ consists of eleven members. The members of the board shall
7 be appointed by the Governor and shall include: one licensed physician and one registered
8 nurse, neither of whom ~~shall~~ may be an administrator or an employee of a nursing facility nor
9 have any direct financial interest in nursing facilities; one practicing hospital administrator who
10 is also licensed as a nursing facility administrator; two practicing administrators of proprietary
11 nursing facilities; two practicing administrators of nonprofit nursing facilities; a designee of the
12 secretary of health; a designee of the ~~director of social welfare~~ secretary of social services; and,
13 two members of the general public who are not administrators or employees of a nursing facility
14 and who have no direct financial interest in nursing facilities. The terms of all members shall
15 be three years. No member may serve more than three consecutive full terms. The designees of
16 the health and ~~welfare~~ social services departments shall serve without compensation and
17 reimbursement as provided in § 36-28-25, except that their travel expenses shall be paid by their
18 respective agencies pursuant to § 3-9-2. ~~Appointments to the board shall be made by the~~
19 ~~Governor after consultation with the associations appropriate to the professions representative~~
20 ~~of the vacancies to be filled.~~ The appointment to an unexpired term is not considered a full term.

21 Section 68. That § 36-29-8 be amended to read as follows:

22 36-29-8. ~~There is created an~~ The board shall appoint an athletic training committee, ~~which~~
23 ~~shall be comprised~~ composed of three residents of this state who are licensed to practice athletic
24 training in the state, one of ~~which~~ whom shall be a registered physical therapist. This committee

1 shall meet at least annually or as deemed necessary to conduct business. The committee shall
2 assist the Board of Medical and Osteopathic Examiners in conducting exams and shall assist the
3 board in all matters pertaining to the licensure, practice and discipline of those licensed to
4 practice athletic training in this state and the establishment of rules ~~and regulations~~ pertaining
5 to athletic training. ~~The South Dakota Athletic Trainers' Association shall nominate two people~~
6 ~~for each vacancy at least six months prior to the vacancy.~~ Each person appointed to the
7 committee after the initial members shall serve for a period of three years. ~~The board shall fill~~
8 ~~the vacancy from a list of nominees presented by the South Dakota Athletic Trainers'~~
9 ~~Association. In the event~~ No committee member may be appointed to more than three
10 consecutive full terms. If a vacancy arises due to death, retirement, or removal from the state,
11 ~~such~~ the vacancy shall be filled in the same manner as original appointments. The member shall
12 serve the remainder of the unexpired term. The appointment to an unexpired term is not
13 considered a full term.

14 Section 69. That § 36-29-19 be amended to read as follows:

15 36-29-19. The proceedings for cancellation, revocation, or suspension of a license may be
16 initiated when the Board of Medical and Osteopathic Examiners has written information that
17 any person may have been guilty of any misconduct pursuant to § 36-29-18 or is guilty of ~~gross~~
18 incompetence or unprofessional or dishonorable conduct.

19 Section 70. That § 36-31-2 be amended to read as follows:

20 36-31-2. ~~There is hereby established an~~ The board shall appoint an occupational therapy
21 committee ~~consisting~~ composed of three registered occupational therapists or two registered
22 occupational therapists and one certified occupational therapy assistant, ~~who.~~ The committee
23 shall assist the Board of Examiners in approving qualifications of persons applying for a license
24 to practice occupational therapy in South Dakota, or the promulgation of rules pertaining to

1 occupational therapy, including guidelines for continuing competency. ~~Committee appointments~~
2 ~~shall be made within six months of July 1, 1986.~~ The committee shall meet a minimum of two
3 times per year. ~~The South Dakota occupational therapy association may at a regular or special~~
4 ~~meeting held within six months prior to the existence of any vacancy on the committee,~~
5 ~~nominate two persons for each vacancy on the committee.~~ All persons appointed to ~~such the~~
6 board after the first members shall serve for a period of three years. ~~The Board of Examiners~~
7 ~~may select from the list of nominees presented to it, as certified by the secretary of the~~
8 ~~association, persons to serve on such committee. Any~~ No member may serve more than three
9 consecutive full terms. Each person nominated to serve on such committee shall have the
10 following qualifications:

- 11 (1) ~~They~~ The person shall be ~~residents~~ a resident of South Dakota;
12 (2) ~~They~~ The person shall be licensed to practice occupational therapy in South Dakota;
13 and
14 (3) ~~They~~ The person shall have practiced occupational therapy a minimum of three years.

15 If any vacancy arises on ~~such the~~ committee ~~by reason of death, retirement, removal from~~
16 ~~this state, or otherwise of any member serving on such committee, such, the~~ vacancy shall be
17 filled in the same manner as original appointments ~~thereto are made and the term of the.~~ The
18 member ~~chosen to fill a vacancy shall be for~~ serve the remainder of the unexpired term ~~of the~~
19 ~~committee member he is replacing. The appointment to an unexpired term is not considered a~~
20 full term.

21 Section 71. That § 36-31-15 be amended to read as follows:

22 36-31-15. A proceeding for cancellation, revocation, or suspension of a license may be
23 initiated if the board has written information that any person may have been guilty of any
24 misconduct pursuant to § 36-31-14, or is guilty of ~~gross~~ incompetence or unprofessional or

dishonorable conduct.

Section 72. That § 36-32-2 be amended to read as follows:

36-32-2. ~~There is hereby created the~~ The South Dakota Board of Counselor Examiners,
~~which shall consist of seven~~ consists of nine members, ~~one of whom shall be a lay member~~
~~representing consumers of the services regulated by the board, one of whom shall be a counselor~~
~~educator, one of whom shall be a licensed marriage and family therapist, one of whom shall be~~
~~a licensed professional counselor--mental health, and two of whom shall be from any three of~~
~~whom shall be lay members and six of whom shall be professionals actively engaged in~~
~~professional counseling or marriage and family therapy and broadly representing a cross section~~
~~of the licensed disciplines governed by this board, all appointed by the Governor. All members~~
~~with the exception of the lay member and the counselor educator shall be engaged in rendering~~
~~counseling services. The Governor shall appoint all of the members.~~

Section 73. That § 36-32-3 be amended to read as follows:

36-32-3. In order to be eligible for appointment to the board as a professional member, a
person, ~~other than the lay member~~, shall be licensed pursuant to this chapter or chapter 36-33.
~~However, the initial appointees must meet the qualifications for licensure and shall become~~
~~licensed professional counselors upon their appointment as members of the board.~~

Section 74. That § 36-32-4 be amended to read as follows:

36-32-4. Appointments to the board shall be for terms of three years, ~~beginning and begin~~
on July first. No member of the board may serve for more than three successive full terms;
~~appointment of a member. Appointment~~ to an unexpired term ~~shall be~~ is not considered as a full
term.

Section 75. That § 36-33-3 be repealed.

~~36-33-3. The board shall appoint a Marriage and Family Therapists' Advisory Committee~~

1 ~~composed of five members. Four of the members shall be clinical members of the American~~
2 ~~Association for Marriage and Family Therapy and the other member shall be an individual~~
3 ~~representing the public who is unaffiliated with the profession.~~

4 ~~— Committee members shall be selected from a list of nominees submitted by the South~~
5 ~~Dakota Association for Marriage and Family Therapy. Each committee member shall serve a~~
6 ~~term of three years, except initial appointees whose terms shall be staggered so that no more~~
7 ~~than two members' terms expire in any one year. If a vacancy occurs, the board shall appoint a~~
8 ~~person to fill the unexpired term.~~

9 ~~— The advisory committee shall assist the board in evaluating the qualifications of applicants~~
10 ~~for licensure and reviewing the examination results of applicants. The committee shall also~~
11 ~~make recommendations to the board regarding rules promulgated pursuant to this chapter.~~

12 Section 76. That § 36-34-2 be amended to read as follows:

13 36-34-2. ~~There is hereby created the~~ The South Dakota Certification Board for Alcohol and
14 Drug Professionals that consists of nine members, three of whom shall be lay members and six
15 of whom shall be professionals certified pursuant to this chapter. Each professional member
16 shall be active within the chemical dependency profession and broadly represent a cross section
17 of the profession of chemical dependency counseling and prevention services. ~~One member~~
18 ~~shall be a lay member and resident of the state; one member shall be an educator from an~~
19 ~~addiction studies postsecondary education program; four members shall be certified chemical~~
20 ~~dependency counselors in active practice within the state and broadly representing a cross~~
21 ~~section of the profession of chemical dependency counseling; one member shall be a certified~~
22 ~~prevention specialist; one member shall be an attorney licensed to practice law in the State of~~
23 ~~South Dakota; and one member shall be a certified practitioner who is an enrolled member of~~
24 ~~a tribe.~~ This board replaces the functions previously performed by the South Dakota Chemical

1 Dependency Counselor Certification Board, a private nonprofit entity doing business as the
2 Certification Board for Alcohol and Drug Professionals.

3 Section 77. That § 36-34-3 be amended to read as follows:

4 36-34-3. The Governor shall appoint the members to the board. ~~Initial appointments to the~~
5 ~~board shall be staggered for terms of one, two, and three years, with three members appointed~~
6 ~~for one year, three members appointed for two years, and three members appointed for three~~
7 ~~years. Thereafter, appointments shall be for terms of three years beginning which shall begin~~
8 ~~on the first day of July. Any board member appointed prior to July 1, 2005, shall complete the~~
9 ~~member's unexpired term. Thereafter, appointment shall be for a term of three years beginning~~
10 ~~upon expiration of the term.~~

11 Section 78. That § 36-34-4 be amended to read as follows:

12 36-34-4. The Governor may remove any member of the board for cause. If there is a vacancy
13 on the board ~~caused by the death, resignation, removal from the state of any member, or for any~~
14 ~~other reason~~, the Governor shall appoint a new member to serve the unexpired term. No member
15 of the board may serve for more than ~~two~~ three successive full terms. The appointment to an
16 unexpired term is not considered a full term.

17 Section 79. The effective date of sections 11, 13, and 15 of this Act is December 30, 2006.

18 Section 80. The effective date of sections 31, 33, and 35 of this Act is September 30, 2006.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

992L0758

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1220** - 02/16/2005

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Representatives Rhoden, Dykstra, Gillespie, Hargens, and Michels and
Senators Bogue, Hanson (Gary), Koskan, Moore, and Schoenbeck

1 FOR AN ACT ENTITLED, An Act to revise the calculation of state aid to general education
2 and appropriate money therefor.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. There is hereby appropriated from the state general fund, after the transfer of
5 earnings from the education enhancement trust fund created in Article XII, section 6 of the
6 South Dakota Constitution, the sum of two million seven hundred fifty-eight thousand seven
7 hundred seventy-one dollars (\$2,758,771), or so much thereof as may be necessary, to the
8 Department of Education for distribution through the foundation formula in chapter 13-13.

9 Section 2. That § 13-13-10.1 be amended to read as follows:

10 13-13-10.1. Terms used in this chapter mean:

11 (1) "Average daily membership," the average number of resident and nonresident
12 kindergarten through twelfth grade pupils enrolled in all schools operated by the
13 school district during the previous regular school year, minus average number of
14 pupils for whom the district receives tuition, except pupils described in subdivision



1 (1A) and pupils for whom tuition is being paid pursuant to § 13-28-42 and plus the
2 average number of pupils for whom the district pays tuition;

3 (1A) Nonresident students who are in the care and custody of the Department of Social
4 Services, the Unified Judicial System, the Department of Corrections, or other state
5 agencies and are attending a public school may be included in the average daily
6 membership of the receiving district when enrolled in the receiving district. When
7 counting a student who meets these criteria in its general enrollment average daily
8 membership, the receiving district may begin the enrollment on the first day of
9 attendance. The district of residence prior to the custodial transfer may not include
10 students who meet these criteria in its general enrollment average daily membership
11 after the student ceases to attend school in the resident district;

12 (2) "Adjusted average daily membership," calculated as follows:

13 (a) For districts with an average daily membership of two hundred or less,
14 multiply 1.2 times the average daily membership;

15 (b) For districts with an average daily membership of less than six hundred, but
16 greater than two hundred, raise the average daily membership to the 0.8293
17 power and multiply the result times 2.98;

18 (c) For districts with an average daily membership of six hundred or more,
19 multiply 1.0 times their average daily membership;

20 (3) "Index factor," is the annual percentage change in the consumer price index for urban
21 wage earners and clerical workers as computed by the Bureau of Labor Statistics of
22 the United States Department of Labor for the year before the year immediately
23 preceding the year of adjustment or three percent, whichever is less;

24 (4) "Per student allocation," for school fiscal year ~~2005 is \$4,086.56~~ 2006 is \$4,235.71.

1 Each school fiscal year thereafter, the per student allocation is the previous fiscal
2 year's per student allocation increased by the index factor;

3 (5) "Local need," the per student allocation multiplied by the adjusted average daily
4 membership;

5 (6) "Local effort," the amount of ad valorem taxes generated in a school fiscal year by
6 applying the levies established pursuant to § 10-12-42;

7 (7) "General fund balance," the unreserved fund balance of the general fund, less general
8 fund exclusions plus, beginning with transfers made in fiscal year 2001, any transfers
9 out of the general fund for the previous school fiscal year;

10 (8) "General fund balance percentage," is a school district's general fund balance divided
11 by the school district's total general fund expenditures for the previous school fiscal
12 year, the quotient expressed as a percent;

13 (9) "General fund base percentage," is the general fund balance percentage as of June 30,
14 2000. However, the general fund base percentage can never increase and can never
15 be less than twenty percent;

16 (10) "Allowable general fund balance," the fund base percentage multiplied by the
17 district's general fund expenditures in the previous school fiscal year;

18 (11) "Imputed interest rate," the average prime rate for the preceding fiscal year minus 2.5
19 percentage points;

20 (12) "General fund exclusions," revenue a school district has received from the imposition
21 of the excess tax levy pursuant to § 10-12-43; revenue a school district has received
22 from gifts, contributions, grants, or donations; revenue a school district has received
23 under the provisions of §§ 13-6-92 to 13-6-96, inclusive; and any revenue in the
24 general fund set aside for a noninsurable judgment.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

439L0743

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1222 - 02/23/2005

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Representatives O'Brien, Boomgarden, Cutler, Hennies, Kraus, Murschel, and Willadsen and Senators Olson (Ed) and Schoenbeck

1 FOR AN ACT ENTITLED, An Act to establish child neglect and endangerment as criminal
2 offenses and to provide penalties therefor.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. It is a Class 1 misdemeanor for any parent, guardian, or custodian to willfully
5 deprive his or her child of necessary food, clothing, medical care, shelter, or supervision if the
6 parent, guardian, or custodian is reasonably able to make the necessary provisions and the
7 deprivation harms the child's physical, mental, or emotional health.

8 Section 2. It is a Class 6 felony for any parent, guardian, or custodian to knowingly permit
9 any continuing physical or sexual abuse of his or her child.

10 Section 3. It is a Class 1 misdemeanor for any parent, guardian, or custodian to:

11 (1) Intentionally or recklessly cause or permit his or her child to be placed in a situation
12 likely to substantially harm the child's physical health or cause the child's death, other
13 than the inherent risks associated with sports, athletics, or other childhood activities;
14 or



1 (2) Knowingly cause or permit his or her child to be present where any person is
2 manufacturing, using, or distributing methamphetamines or any other unlawfully
3 manufactured controlled drug or substance.

4 Section 4. It is a defense to prosecution under this Act if, at the time of the offense, there
5 was a reasonable apprehension in the mind of the defendant that acting to stop or to prevent the
6 offense would result in substantial bodily harm to the defendant or the child in retaliation.

7 Section 5. The code counsel shall codify this Act in a newly created chapter in Title 22
8 entitled "Offenses Against the Family."

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

592L0590

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1233** - 02/23/2005

Introduced by: Representatives Hunt, Dykstra, Gillespie, Glenski, Hargens, Heineman, Howie, Jerke, Klaudt, Koistinen, Kraus, Krebs, Lange, McCoy, Michels, Miles, Pederson (Gordon), Putnam, Rave, Rhoden, Schafer, Street, Tornow, Weems, Wick, and Willadsen and Senators Bartling, Abdallah, Broderick, Earley, Hanson (Gary), Kloucek, Lintz, Moore, Peterson (Jim), Schoenbeck, and Sutton (Duane)

1 FOR AN ACT ENTITLED, An Act to establish a task force to study abortion and to provide
2 for its composition, scope, and administration.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. There is hereby established the South Dakota Task Force to Study Abortion. The
5 task force shall consist of seventeen members. Six members shall be appointed by the Speaker
6 of the House of Representatives, and six members shall be appointed by the President Pro
7 Tempore of the Senate, and five members shall be appointed by the Governor. Not all members
8 appointed by each appointive power may belong to the same political party. If there is a vacancy
9 on the task force, the vacancy shall be filled in the same manner as the original appointment.

10 Section 2. The task force shall be under the supervision of the Executive Board of the
11 Legislative Research Council and staffed and funded as an interim legislative committee.

12 Section 3. The task force shall study the practice of abortion since its legalization, the body
13 of knowledge concerning the development and behavior of the unborn child which has



1 developed because of technological advances and medical experience since the legalization of
2 abortion, the societal, economic, and ethical impact and effects of legalized abortion, the degree
3 to which decisions to undergo abortions are voluntary and informed, the effect and health risks
4 that undergoing abortions has on the women, including the effects on the women's physical and
5 mental health, including the delayed onset of cancer, and her subsequent life and socioeconomic
6 experiences, the nature of the relationship between a pregnant woman and her unborn child,
7 whether abortion is a workable method for the pregnant woman to waive her rights to a
8 relationship with the child, whether the unborn child is capable of experiencing physical pain,
9 whether the need exists for additional protections of the rights of pregnant women
10 contemplating abortion, and whether there is any interest of the state or the mother or the child
11 which would justify changing the laws relative to abortion. The task force shall prepare a report
12 detailing its findings, which shall include any proposals for additional legislation as it may deem
13 advisable, and submit the report to the Governor and Legislature no later than December 1,
14 2005.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

552L0747

SENATE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **HB 1240** - 02/23/2005

This bill has been extensively amended (houghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Representatives Gillespie and Dykstra and Senator Broderick

1 FOR AN ACT ENTITLED, An Act to require that notice of certain tax equalization decisions
2 be published.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 10-11-26.1 be amended to read as follows:

5 10-11-26.1. The county board of equalization shall give written notice of its decision to be
6 postmarked on or before the Friday following its adjournment to each person owning property
7 on which action was taken and to the clerk of the affected local board of equalization. In
8 addition, the county shall publish the minutes in a legal newspaper of the county in the same
9 manner as other proceedings of the board of county commissioners are published as provided
10 in § 10-11-40.

11 Section 2. That § 10-11-44 be amended to read as follows:

12 10-11-44. Any person, firm, limited liability company, corporation, taxing district,
13 governmental subdivision, or agency interested as described in § 10-11-42 may appeal from a
14 decision of the county board of equalization to the circuit court in and for such county. Such
15 appeal shall be filed within thirty days ~~after~~ of the published notice required by § 10-11-26.1 or



1 the written notice that has been served of the decision ~~of~~ by the county board of equalization
2 ~~and~~, whichever occurred last. The appeal shall be filed in the same manner and upon the same
3 conditions and terms as other appeals may be taken from decisions of a board of county
4 commissioners.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

841L0771

HOUSE HEALTH AND HUMAN SERVICES
COMMITTEE ENGROSSED NO. **HB 1245** -
02/16/2005

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Representative Rave and Senator Dempster

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the use of automated
2 external defibrillators.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 20-9 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 The provisions of this chapter do not apply to an over-the-counter AED purchased without
7 a written prescription. However, any person, who in good faith obtains an over-the-counter AED
8 for use in providing emergency care or treatment or utilizes an over-the-counter AED, is
9 immune from civil liability for any injury as a result of such emergency care or treatment or as
10 a result of an act or failure to act in providing or arranging such emergency care or treatment.
11 The immunity from civil liability pursuant to this section does not apply if the personal injury
12 results from the gross negligence or willful or wanton misconduct of the person rendering such
13 emergency care.



State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

742L0509

SENATE COMMERCE COMMITTEE ENGROSSED NO.

HB 1248 - 02/24/2005

Introduced by: Representatives McLaughlin, Brunner, Frost, Hanks, Hennies, Jerke, Koistinen, Rausch, and Tornow and Senators Adelstein, Bogue, Duenwald, Duniphan, Hundstad, McNenny, and Olson (Ed)

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding money lenders.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That § 54-4-40 be amended to read as follows:

4 54-4-40. Any person who engages in the business of lending money shall apply for a license
5 as prescribed by §§ 54-4-36 to 54-4-63, inclusive. The applicant shall apply for a license under
6 oath on forms supplied by the division. The application shall contain the name of the applicant's
7 business, proof of surety bond, address of the business, the names and addresses of the partners,
8 members, officers, directors, or trustees, and other information ~~as required by the director by~~
9 ~~rule or order~~ may consider necessary. The applicant shall pay an original license fee as set by
10 rules of the commission promulgated pursuant to chapter 1-26 not to exceed one thousand
11 dollars. If the application of an existing licensee is for an additional location, the application
12 need only include the location and identity of the location manager, plus any changes from the
13 existing license, or such other information the director may consider necessary.

14 Section 2. That § 54-4-42 be amended to read as follows:



54-4-42. The applicant shall submit with the application for a license a bond in an amount not to exceed the total of ~~five~~ ten thousand dollars for the first license and ~~one~~ two thousand five hundred dollars for each additional license. The bond shall be satisfactory to the director and issued by a surety company qualified to do business as a surety in this state. The bond shall be in favor of this state for the use of this state and any person who has a cause of action under §§ 54-4-36 to 54-4-63, inclusive, against the licensee. The bond shall be conditioned on:

- (1) The licensee's faithful performance under §§ 54-4-36 to 54-4-63, inclusive, and any rules adopted pursuant to §§ 54-4-36 to 54-4-63, inclusive; and
- (2) The payment of any amounts that are due to the state or another person during the calendar year for which the bond is given.

The aggregate liability of a surety to all persons damaged by a licensee's violation of §§ 54-4-36 to 54-4-63, inclusive, may not exceed the amount of the bond.

Section 3. That § 54-4-43 be amended to read as follows:

54-4-43. The director shall investigate the facts ~~and, after~~ concerning the application. The director may review, either deny or and consider the relevant business records of the applicant and the competence, experience, integrity, and financial ability of any person who is a member, partner, director, officer, or twenty-five percent or more shareholder of the business. If the director finds that the financial responsibility, financial condition, business experience, character, and general fitness of the applicant reasonably warrant the belief that the business will be conducted lawfully and fairly, the director may grant a license based on the findings.

Section 4. That § 54-4-45 be amended to read as follows:

54-4-45. ~~Any license shall be renewed~~ A license expires on July first. To renew a license, the licensee shall file for renewal by June fifteenth. The renewal application shall include a renewal fee not to exceed one thousand dollars, as set by rules of the commission promulgated

pursuant to chapter 1-26, proof of surety bond, and any other information as required by the director, by rule or order. Any licensee that files for renewal after June fifteenth and before July first shall pay a late fee in addition to the renewal fee. The late fee, not to exceed twenty-five percent of the renewal fee, shall be established by the commission in rules promulgated pursuant to chapter 1-26. After June thirtieth no license may be issued unless an application is filed pursuant to § 54-4-40.

Section 5. That § 54-4-48 be amended to read as follows:

54-4-48. The director may, ~~upon ten days notice to the licensee,~~ issue a cease and desist order from any practice that does not conform to the requirements set forth in §§ 54-4-36 to 54-4-63, inclusive, or ~~rules any commission rule adopted by commission, order, or condition imposed in writing, or any federal statute, rule, or regulation pertaining to consumer credit. A~~ cease and desist order may be issued to any licensee or to any person engaging in the business of lending money without a license. A licensee aggrieved by such order may appeal pursuant to chapters 1-26 and 1-26D.

Section 6. That § 54-4-49 be amended to read as follows:

54-4-49. The director may suspend or revoke a license for good cause pursuant to ~~chapter~~ chapters 1-26 and 1-26D. If the licensee is the holder of more than one license, the director may suspend or revoke any or all of the licenses. For purposes of this section, good cause includes any of the following:

- (1) Violation of any statute, rule, order, or written condition of the commission or any federal statute, rule, or regulation pertaining to consumer credit;
- (2) Engaging in harassment or abuse, the making of false or misleading representations, or engaging in unfair practices involving lending activity; or
- (3) Performing an act of commission or omission or practice that is a breach of trust or

1 a breach of fiduciary duty.

2 Section 7. That § 54-4-50 be amended to read as follows:

3 54-4-50. An action may ~~also~~ be brought in circuit court by the attorney general or the
4 division, or both, to enjoin a licensee from engaging in or continuing a violation or from doing
5 any act in furtherance thereof. ~~In any action, an order or judgment may be entered awarding a~~
6 ~~temporary or permanent injunction.~~

7 Section 8. That § 54-4-57 be amended to read as follows:

8 54-4-57. The division ~~shall~~ may annually, or as often as the director considers necessary,
9 conduct an examination of business records and accounts of any licensee licensed under §§ 54-
10 4-36 to 54-4-63, inclusive. ~~The director may order an examination if circumstances require a~~
11 ~~special examination.~~ The director may charge back to the licensee any cost associated with an
12 on-site examination. The director may waive an on-site examination and only require an annual
13 self-examination. If a licensee conducts a self-examination, the licensee shall provide any
14 information requested under oath and on forms provided by the division by order or rule. The
15 provisions of § 51A-2-35 apply to records and examination reports required under this chapter.

16 Section 9. That chapter 54-4 be amended by adding thereto a NEW SECTION to read as
17 follows:

18 If the division requires the production of records that are located outside this state, the party
19 shall either make them available to the division at a convenient location within this state or pay
20 the reasonable and necessary expenses for the division to examine them at the place where they
21 are maintained. The director may designate representatives, including officials of the state in
22 which the records are located, to inspect them on the director's behalf.

23 Section 10. That chapter 54-4 be amended by adding thereto a NEW SECTION to read as
24 follows:

1 A person licensed pursuant to this Act shall appoint a resident agent for service of process
2 and provide notice of such appointment to the director.

3 Section 11. That chapter 54-4 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 A person licensed pursuant to this Act shall consent to be sued in the circuit courts of the
6 state for purposes of the director enforcing any provision of chapter 54-4 and any rules
7 promulgated pursuant to chapter 54-4. The consent to suit shall be demonstrated by the
8 execution and submission of a consent to suit form prepared by the director, with proof of
9 authority to consent and execute the form.

State of South Dakota

EIGHTIETH SESSION LEGISLATIVE ASSEMBLY, 2005

445L0787

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED NO. **HB 1249** - 02/11/2005

Introduced by: Representatives Dykstra, Brunner, Buckingham, Davis, Deadrick, Frost, Fryslie, Garnos, Hackl, Howie, Hunhoff, Hunt, Jensen, Klaudt, Koistinen, Kraus, Krebs, Lange, McCoy, Miles, Nelson, Olson (Ryan), Pederson (Gordon), Putnam, Rausch, Rave, Rhoden, Rounds, Schafer, Sebert, Van Etten, Weems, and Wick and Senators Hansen (Tom), Abdallah, Apa, Bartling, Duenwald, Earley, Gant, Gray, Greenfield, Hanson (Gary), Kooistra, Koskan, Lintz, McNenny, Moore, Napoli, Peterson (Jim), Schoenbeck, Smidt, and Sutton (Duane)

1 FOR AN ACT ENTITLED, An Act to prohibit the performance of abortions, except to save the
2 life of the mother, and to provide a penalty therefor and to provide for a delayed effective
3 date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That § 34-23A-2 be repealed.

6 ~~— 34-23A-2. An abortion may be performed in this state only if it is performed in compliance~~
7 ~~with § 34-23A-3, 34-23A-4, or 34-23A-5.~~

8 Section 2. That § 34-23A-3 be repealed.

9 ~~— 34-23A-3. An abortion may be performed by a physician during the first twelve weeks of~~
10 ~~pregnancy. The abortion decision and its effectuation must be left to the medical judgment of~~
11 ~~the pregnant woman's attending physician during the first twelve weeks of pregnancy.~~

12 Section 3. That § 34-23A-4 be repealed.



~~34-23A-4. An abortion may be performed following the twelfth week of pregnancy and through the twenty-fourth week of pregnancy by a physician only in a hospital licensed under the provisions of chapter 34-12 or in a hospital operated by the United States, this state, or any department, agency, or political subdivision of either or in the case of hospital facilities not being available, in the licensed physician's medical clinic or office of practice subject to the requirements of § 34-23A-6.~~

Section 4. That § 34-23A-5 be repealed.

~~34-23A-5. An abortion may be performed following the twenty-fourth week of pregnancy by a physician only in a hospital authorized under § 34-23A-4 and only if there is appropriate and reasonable medical judgment that performance of an abortion is necessary to preserve the life or health of the mother.~~

Section 5. That § 22-17-5 be repealed.

~~22-17-5. Any person who performs, procures or advises an abortion other than authorized by chapter 34-23A is guilty of a Class 6 felony.~~

Section 6. That chapter 22-17 be amended by adding thereto a NEW SECTION to read as follows:

Any person who administers to any pregnant female or who prescribes or procures for any pregnant female any medicine, drug, or substance or uses or employs any instrument or other means with intent thereby to procure an abortion, unless there is appropriate and reasonable medical judgment that performance of an abortion is necessary to preserve the life of the pregnant female, is guilty of a Class 6 felony.

Section 7. This Act is effective on the date that the states are recognized by the United States Supreme Court to have the authority to regulate or prohibit abortion at all stages of pregnancy.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

400L0779

SENATE AGRICULTURE AND NATURAL RESOURCES

COMMITTEE ENGROSSED NO. **HB 1252 -**

02/24/2005

Introduced by: The Committee on Agriculture and Natural Resources at the request of the
Governor

1 FOR AN ACT ENTITLED, An Act to approve the state prairie dog management plan and to
2 require that amendments to the plan be approved by the Legislature.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. The state prairie dog plan, which has been established by the secretary of
5 agriculture and the secretary of game, fish and parks and filed with the secretary of state on
6 January 28, 2005, is hereby approved in accordance with §§ 34A-8-7 and 34A-8A-8.

7 Section 2. That chapter 34A-8A be amended by adding thereto a NEW SECTION to read
8 as follows:

9 The Department of Agriculture and the Department of Game, Fish and Parks shall submit
10 any changes or amendments to any plan approved by the Legislature pursuant to § 34A-8A-8
11 for legislative approval before the changes or amendments may take effect.



State of South Dakota

EIGHTIETH LEGISLATIVE ASSEMBLY, 2005

717L0081

HOUSE ENGROSSED NO. **SB 2** - 02/24/2005

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Senators Lintz, Greenfield, Hundstad, and Peterson (Jim) and Representatives Hargens, Deadrick, Fryslie, and Rhoden at the request of the Interim Committee on Property Assessment

1 FOR AN ACT ENTITLED, An Act to revise the procedure for assessing certain agricultural
2 property.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 10-6-33.25 be amended to read as follows:

5 10-6-33.25. For the purposes of § 10-6-33.24, the agricultural income value shall be
6 determined using capitalized annual cash rent. The annual cash rent is the annual cash rent,
7 excluding the per acre tax on agricultural land, determined through an analysis of arms-length
8 rental agreements collected within the county in the year three years prior to the year for which
9 the agricultural income value is being determined. The agricultural income value of cropland
10 shall be based on average rents over a three-year period for cropland under natural conditions.
11 The agricultural income value of noncropland shall be based on average rents over a three-year
12 period for noncropland under natural conditions. However, no arms-length rental agreements
13 for irrigated land may be used to determine the annual cash rent pursuant to this section. The
14 annual cash rent shall be capitalized at seven and three-fourths percent.



1 The secretary of revenue and regulation may enter into a contract for the collection of cash
2 rent information by county. Cash rent information shall be adjusted by soil survey statistics, if
3 available, and pursuant to section 2 of this Act.

4 Section 2. That chapter 10-6 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 The director of equalization shall annually determine the assessed value of agricultural land
7 as defined by § 10-6-31.3. Any agricultural land assessed based on its agricultural income value
8 pursuant to § 10-6-33.24 and 10-6-33.25 may be value adjusted by the following factors:

9 (1) The capacity of the land to produce agricultural products as defined in § 10-6-33.2;
10 and

11 (2) The location, size, soil survey statistics, terrain, and topographical condition of the
12 land including the climate, accessibility, and surface obstructions which can be
13 documented.

14 Section 3. That chapter 10-6 be amended by adding thereto a NEW SECTION to read as
15 follows:

16 If the median rent value per acre in an identifiable region within a county deviates by more
17 than ten percent from the county median rent value per acre, the county director of equalization
18 may establish a separate rent value per acre for the land defined by the director of equalization
19 within that identifiable region.

State of South Dakota

EIGHTIETH LEGISLATIVE ASSEMBLY, 2005

400L0343

HOUSE ENGROSSED NO. **SB 53** - 02/24/2005

Introduced by: The Committee on Commerce at the request of the Department of Revenue
and Regulation

1 FOR AN ACT ENTITLED, An Act to provide for adequate access to health care provider
2 networks.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 58-17C be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Any person, directly or indirectly, offering a plan or program providing a discount on the
7 fees of any provider of health care goods or services, that is not offered directly by a health
8 carrier as provided by this chapter, shall register in a format as prescribed by the director and
9 shall file reports and conduct business under the same standards as required of utilization review
10 organizations in accordance with provisions of §§ 58-17C-65 to 58-17C-66, inclusive. No health
11 carrier may offer or provide coverage through a person not registered but required to be
12 registered pursuant to this Act. Any plan or program that is registered pursuant to § 58-17C-20
13 is not required to maintain a separate registration pursuant to this Act. A plan or program of
14 discounted goods or services that is offered by a health carrier in conjunction with a health
15 benefit plan, as defined in §§ 58-18-42 and 58-17-66(9), or a medicare supplement policy as



1 defined in § 58-17A-1, is not required to be registered pursuant to this Act. A plan or program
2 offered by a health care provider as defined in § 34-12C-1 is not required to register pursuant
3 to this Act if the health care provider does not charge for the plan or program.

4 Section 2. That chapter 58-17C be amended by adding thereto a NEW SECTION as follows:

5 Any person subject to registration pursuant to section 1 of this Act shall prominently and
6 boldly disclose that the product is not insurance. Any advertisements or solicitations made by
7 such a person are subject to the provisions of §§ 58-33A-2 to 58-33A-4, inclusive, and §§ 58-
8 33A-7 to 58-33A-8, inclusive, and §§ 58-33A-10 to 58-33A-12, inclusive. Any administrative
9 rule promulgated pursuant to § 58-33A-7 does not apply to those registered pursuant to this Act
10 unless specifically referenced in the rule. If any such person fails to comply with these
11 provisions or the provisions of this Act, the director may take action in the same manner as
12 provided for by § 58-17C-67 and may revoke the registration. Any such action by the director
13 is subject to notice and hearing as provided by chapter 1-26 and § 58-4-7. A person acting as
14 an agent as defined in chapter 58-30 who sells, solicits, or negotiates a plan or program
15 containing insurance benefits shall meet the licensing and appointment requirements of that
16 chapter if such person is otherwise required to be licensed by chapter 58-30.

17 Section 3. That chapter 58-17C be amended by adding thereto a NEW SECTION to read as
18 follows:

19 No person subject to registration pursuant to section 1 of this Act may receive personal
20 information, money, or other consideration for enrollment in a plan or program until the
21 consumer has signed a contract or agreement with the person and no later than at the time the
22 contract is signed, provides, at a minimum, the following information, disclosed in a clear and
23 conspicuous manner:

24 (1) The name, true address, telephone number, and website address of the registered

1 person who is responsible for customer service;

2 (2) A detailed description of the plan or program, including the goods and services
3 covered and all exemptions and discounts that apply to each category thereof;

4 (3) All costs associated with the plan or program, including any sign-up fee and any
5 recurring costs;

6 (4) An internet website that is updated regularly or a paper copy where the consumer can
7 access the names and addresses of all current participating providers in the
8 consumer's area;

9 (5) A statement of the consumer's right to return the plan or program within thirty days
10 of its delivery to the person or agent through whom it was purchased and to have all
11 costs of the plan or program, excluding a nominal process fee refunded if, after
12 examination of the plan or program, the purchaser is not satisfied with it for any
13 reason;

14 (6) A statement of the consumer's right to terminate the plan or program at any time by
15 providing written notice or other notice, the form to be used for the termination
16 notice, and the address where the notice is to be sent if different than the address
17 provided in subdivision (1); and

18 (7) Notice that the consumer is not obligated to make any further payments under the
19 plan or program, nor is the consumer entitled to any benefits under the plan or
20 program for any period of time after the last month for which payment has been
21 made.

22 The requirement that the contract or agreement be signed prior to any money or
23 consideration being obtained does not apply to a transaction in which payment by the consumer
24 is made by credit card or by means of a telephonic transaction so long as the disclosures

required by this section are provided to the consumer by way of postal mail, facsimile, or electronic mail within ten business days of the consumer's enrollment.

Section 4. That chapter 58-17C be amended by adding thereto a NEW SECTION to read as follows:

Any plan or program offered by a person subject to registration pursuant to section 1 of this Act shall provide thirty days from the date of the signed consumer contract or agreement, or thirty days from the receipt of the disclosures required by section 3 of this Act if the consumer purchased the plan or program over the telephone, in which the consumer may return the plan or program to the person or agent through whom it was purchased and have all costs of the plan or program, excluding a nominal processing fee as prescribed by the director by rules promulgated pursuant to chapter 1-26, refunded in full.

Section 5. That § 58-18-20 be amended to read as follows:

58-18-20. Any insurer authorized to write health insurance in this state ~~shall have the power to~~ may issue blanket health insurance. No such blanket policy or certificate may be issued or delivered, or coverage solicited, in this state unless a copy of the form thereof ~~shall have~~ has been filed in accordance with § 58-11-12. Every such blanket policy or certificate shall contain provisions, which in the opinion of the director, are at least as favorable to the policyholder and the individual insured as those set forth in §§ 58-18-21 to 58-18-27, inclusive.

Section 6. Any person subject to registration pursuant to section 1 of this Act shall maintain a surety bond in the amount of twenty thousand dollars issued by a surety company authorized to do business in this state, or establish and maintain a surety account in the amount of twenty thousand dollars at a federally insured bank, savings and loan association, or federal savings bank located in this state. Each surety bond and surety account is subject to the following:

(1) A copy of the bond or a statement identifying the depository, trustee, and account

number of the surety account, and thereafter proof of annual renewal of the bond or maintenance of the surety account, shall be filed with the director of the Division of Insurance;

(2) A surety account shall be maintained until two years after the date that the person subject to registration pursuant to section 1 of this Act ceases operations in the state. Funds from any surety account may not be released to the person subject to registration pursuant to section 1 of this Act without the specific consent of the attorney general;

(3) No surety on the bond of a person subject to registration pursuant to section 1 of this Act may cancel such bond without giving written notice thereof to the secretary of state. Whenever the secretary of state receives notice of a surety's intention to cancel the bond of a person subject to registration pursuant to section 1 of this Act, the secretary of state shall notify the affected person that, unless such person files another twenty thousand dollar surety bond with the secretary of state or establishes a twenty thousand dollar surety account on or before the cancellation date of such surety bond, then such person subject to registration pursuant to section 1 of this Act is no longer authorized to do business in this state;

(4) The bond or surety account shall be in favor of any person and the director of the Division of Insurance for the benefit of any person who is damaged by any violation of this Act, including any violation by the supplier or by any other person which markets, promotes, advertises, or otherwise distributes a discount card on behalf of the supplier. The bond shall cover any violation occurring during the time period during which the bond is in effect; and

(5) Any person claiming against the bond or surety account for a violation of this Act

1 may maintain an action at law against the person subject to registration pursuant to
2 section 1 of this Act and against the surety or trustee of the surety account. The
3 aggregate liability of the surety or trustee of the surety account to all persons
4 damaged by violations of this Act may not exceed the amount of the surety bond or
5 account.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

277L0440

HOUSE COMMERCE COMMITTEE ENGROSSED NO.

SB 154 - 02/22/2005

This bill has been extensively amended (houghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Senators Kelly, Broderick, Dempster, Gant, Hansen (Tom), and Napoli and
Representatives Weems, Cutler, Dykstra, Krebs, and Kroger

1 FOR AN ACT ENTITLED, An Act to exempt certain entities from the lending license fees and
2 surety bond requirements and bank franchise taxes.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 54-4-40 be amended to read as follows:

5 54-4-40. Any person who engages in the business of lending money shall apply for a license
6 as prescribed by §§ 54-4-36 to 54-4-63, inclusive. The applicant shall apply for a license under
7 oath on forms supplied by the division. The application shall contain the name of the applicant's
8 business, proof of surety bond, address of the business, and other information as required by the
9 director by rule or order. The applicant shall pay an original license fee as set by rules of the
10 commission promulgated pursuant to chapter 1-26 not to exceed one thousand dollars. If the
11 application of an existing licensee is for an additional location, the application need only include
12 the location and identity of the location manager, plus any changes from the existing license,
13 or such other information the director may consider necessary. The State of South Dakota, any
14 political subdivision of the state, and any quasi-governmental organization created by an



1 executive order of the State of South Dakota and any subsidiary of such organization; any
2 nonprofit corporation formed pursuant to chapter 47-22; any nonprofit United States Treasury
3 Community Development Financial Institution, Small Business Administration Certified
4 Development Company, or Regional Revolving Loan Fund; or any commercial club, chamber
5 of commerce, or industrial development corporation formed pursuant to § 9-12-11 or 9-27-37
6 is subject to this chapter but exempt from initial license fees, renewal fees, and surety bond
7 requirements under this chapter.

8 Section 2. That § 54-14-2 be amended to read as follows:

9 54-14-2. Any person who engages in the business of a mortgage banker or mortgage broker
10 shall obtain an original license to engage in such business under the terms and conditions of this
11 chapter, shall apply therefor under oath, on forms prescribed by the division, and shall pay an
12 original, nonrefundable license fee as set by rules of the commission promulgated pursuant to
13 chapter 1-26. The fee for a mortgage banker license may not exceed one thousand dollars and
14 the fee for a mortgage broker license may not exceed five hundred dollars. If the application is
15 approved, a license shall be issued.

16 To renew a license, the licensee shall file for renewal by June fifteenth. Licenses shall be
17 renewed on July first. The commission shall establish a renewal license fee by rules
18 promulgated pursuant to chapter 1-26. The renewal fee for a mortgage banker license may not
19 exceed one thousand dollars and the renewal fee for a mortgage broker license may not exceed
20 five hundred dollars. The State of South Dakota, any political subdivision of the state, and any
21 quasi-governmental organization created by an executive order of the State of South Dakota and
22 any subsidiary of such organization; any nonprofit corporation formed pursuant to chapter 47-
23 22; any nonprofit United States Treasury Community Development Financial Institution, Small
24 Business Administration Certified Development Company, or Regional Revolving Loan Fund;

1 or any commercial club, chamber of commerce, or industrial development corporation formed
2 pursuant to § 9-12-11 or 9-27-37 is subject to this chapter but exempt from initial license fees,
3 renewal fees, and surety bond requirements under this chapter.

4 Section 3. That § 54-4-54 be amended to read as follows:

5 54-4-54. Each licensee, whether a corporation or otherwise, shall pay the annual tax
6 provided in chapter 10-43, upon the net income of the licensee, and measured by the net income
7 assignable to such business in South Dakota. The annual tax provided by this section may not
8 be less than twenty-four dollars. The State of South Dakota, any political subdivision of the
9 state, and any quasi-governmental organization created by an executive order of the State of
10 South Dakota and any subsidiary of such organization; any nonprofit United States Treasury
11 Community Development Financial Institution, Small Business Administration Certified
12 Development Company, or Regional Revolving Loan Fund; or any commercial club, chamber
13 of commerce, or industrial development corporation formed pursuant to § 9-12-11 or 9-27-37
14 is exempt from the payment of this tax.

15 Section 4. That § 54-14-6 be amended to read as follows:

16 54-14-6. All licensees under this chapter in addition to the license and other fees provided
17 by this chapter, are required to pay the annual tax provided in chapter 10-43, upon the net
18 income of the licensee measured by the net income assignable to the licensee's business in South
19 Dakota. The State of South Dakota, any political subdivision of the state, and any quasi-
20 governmental organization created by an executive order of the State of South Dakota and any
21 subsidiary of such organization; any nonprofit United States Treasury Community Development
22 Financial Institution, Small Business Administration Certified Development Company, or
23 Regional Revolving Loan Fund; or any commercial club, chamber of commerce, or industrial
24 development corporation formed pursuant to § 9-12-11 or 9-27-37 is exempt from the payment

1 of this tax.

2 Section 5. That § 54-4-36 be amended by adding thereto a NEW SUBDIVISION to read as
3 follows:

4 "Regional revolving loan fund," a regional revolving loan fund with a service area of at least
5 five South Dakota counties, a designated staff for loan processing and servicing, a loan portfolio
6 of at least one million dollars, and which is governed by a board of directors that meets at least
7 quarterly.

8 Section 6. That § 54-14-1 be amended by adding thereto a NEW SUBDIVISION to read as
9 follows:

10 "Regional revolving loan fund," a regional revolving loan fund with a service area of at least
11 five South Dakota counties, a designated staff for loan processing and servicing, a loan portfolio
12 of at least one million dollars, and which is governed by a board of directors that meets at least
13 quarterly.

14 Section 7. That chapter 10-43 be amended by adding thereto a NEW SECTION to read as
15 follows:

16 The State of South Dakota, any political subdivision of the state, and any quasi-
17 governmental organization created by an executive order of the State of South Dakota and any
18 subsidiary of such organization; any nonprofit United States Treasury Community Development
19 Financial Institution, Small Business Administration Certified Development Company, or
20 Regional Revolving Loan Fund; or any commercial club, chamber of commerce, or industrial
21 development corporation formed pursuant to § 9-12-11 or 9-27-37 is exempt from the payment
22 of this tax.

State of South Dakota

EIGHTIETH SESSION LEGISLATIVE ASSEMBLY, 2005

400L0645

HOUSE ENGROSSED NO. **SB 188** - 02/24/2005

Introduced by: The Committee on Appropriations at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to revise the General Appropriations Act for fiscal year
2 2005 for education enhancement.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That section 13 of chapter 45 of the 2004 Session Laws be amended as follows:

5 BOARD OF REGENTS

6 South Dakota Opportunity Scholarships

7 Operating Expenses, General Funds, delete "\$1,300,000" and insert "\$1,933,125"

8 Adjust all totals accordingly.

9 Section 2. After section 32 of chapter 45 of the 2004 Session Laws insert:

10 Section 33. The state treasurer shall transfer to the state general fund money from the dakota
11 cement trust fund, the amount identified by notice of the state investment officer pursuant to
12 S.D. Const., Art. XIII, § 21, for South Dakota opportunity scholarships.

13 Section 3. The moneys appropriated by this Act which are unspent at the end of fiscal year
14 2005 shall be reappropriated to fiscal year 2006.

15 Section 4. This Act is effective June 21, 2005.



State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

275L0655

HOUSE JUDICIARY COMMITTEE ENGROSSED NO. **SB 217** - 02/18/2005

Introduced by: Senator Knudson and Representative Cutler

1 FOR AN ACT ENTITLED, An Act to revise certain cross references in the code with regard
2 to the implementation of the South Dakota Business Corporation Act and to provide for an
3 exception to the repealers.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That § 36-21A-55 be amended to read as follows:

6 36-21A-55. The holding of a license issued under the provisions of this chapter or
7 participating in a transaction for which a license is required by this chapter is the transaction of
8 business within the state, and a nonresident licensee or unlicensed person so defined is subject
9 to the personal jurisdiction of the courts of this state as provided by § 15-7-2.

10 Service of process shall be made upon corporate licensees as provided by §§ ~~47-2-32 to 47-~~
11 ~~2-35, inclusive~~ section 52 of Senate Bill 70 previously enacted by the 2005 Legislature, and
12 § 47-8-15 to 47-8-18, inclusive section 362 of Senate Bill 70 previously enacted by the 2005
13 Legislature, and otherwise as provided by chapter 15-6.

14 Any person licensed under this chapter shall deliver a copy of any process or pleading to
15 which that licensee is a party to the executive director of the commission within ten days of its



1 being served by or upon him. Failure to file with the executive director is not jurisdictional in
2 any action to which a licensee under this chapter may be a party.

3 Section 2. That § 37-28-1 be amended to read as follows:

4 37-28-1. Terms used in this chapter, unless the context otherwise plainly requires, mean:

5 (1) "Act of Congress," the Act of Congress approved June 18, 1934, entitled an act to
6 provide for the establishment, operation and maintenance of foreign trade zones in
7 ports of entry of the United States, to expedite and encourage foreign commerce, and
8 for other purposes, as amended, and commonly known as the Foreign Trade Zones
9 Act of 1934;

10 (2) "Private corporation," a corporation organized under ~~chapter 47-2~~ sections 1 to 193,
11 inclusive, sections 235 to 247, inclusive, and sections 272 to 279, inclusive, of Senate
12 Bill 70 previously enacted by the 2005 Legislature, one of the purposes of which is
13 to establish, operate and maintain a foreign trade zone by itself or in conjunction with
14 a public corporation;

15 (3) "Public corporation," this state; a political subdivision of this state; any municipality
16 therein; any public agency of the state, of any public subdivision in the state or of any
17 municipality in the state; or any other corporate instrumentality of this state.

18 Section 3. That § 47-10-24 be amended to read as follows:

19 47-10-24. The provisions of ~~chapters 47-2 to 47-5~~ sections 1 to 193, inclusive, 47-7 sections
20 308 to 346, inclusive, and 47-9 sections 371 to 389, inclusive, of Senate Bill 70 previously
21 enacted by the 2005 Legislature shall apply to corporations incorporated under this chapter,
22 insofar as they may be applicable and not inconsistent with this chapter.

23 Section 4. That § 47-13A-1 be amended to read as follows:

24 47-13A-1. One or more lawyers licensed pursuant to chapter 16-16 may form professional

1 service corporations for the practice of law under ~~chapters 47-2 to 47-9, inclusive~~ sections 1 to
2 193, inclusive, sections 308 to 346, inclusive, and sections 371 to 389, inclusive, of Senate Bill
3 70 previously enacted by the 2005 Legislature, or may form limited liability companies under
4 the South Dakota Limited Liability Company Act, providing that such corporations and limited
5 liability companies are organized and operated in accordance with the provisions of this chapter.
6 In any corporation formed under this chapter one or more persons may act as the sole
7 stockholders, directors or officers of such corporation. However, any limited liability company
8 formed under this chapter shall comply with the South Dakota Limited Liability Act, as
9 amended.

10 Section 5. That § 47-20-13 be amended to read as follows:

11 47-20-13. The secretary of state shall charge and collect the fees provided by ~~§ 47-9-7 and~~
12 ~~any amendments that may be made thereto~~, sections 7 and 8 of Senate Bill 70 previously enacted
13 by the 2005 Legislature, for filing the instruments and issuing the certificates relating to
14 domestic corporations therein provided. The fees applicable to amended articles of incorporation
15 shall apply to restated articles of incorporation and fees applicable to the articles of
16 incorporation shall apply to articles of merger or consolidation.

17 Section 6. That § 47-20-14 be amended to read as follows:

18 47-20-14. The secretary of state shall charge and collect the fees provided by ~~chapter 47-9~~
19 ~~and any amendments that may be made thereto~~ sections 7 and 8 of Senate Bill 70 previously
20 enacted by the 2005 Legislature for filing instruments and issuing certificates relating to foreign
21 corporations.

22 Section 7. That § 47-33-3 be amended to read as follows:

23 47-33-3. (1) Terms used in this chapter mean:

24 (a) "Acquiring person," a person that makes or proposes to make a control share

1 acquisition. If two or more persons act as a partnership, limited partnership, syndicate
2 or other group pursuant to any written or unwritten agreement, arrangement,
3 relationship, understanding or otherwise, for the purposes of acquiring, owning or
4 voting shares of a domestic public corporation, all members of the partnership,
5 syndicate or other group constitute a "person." "Acquiring person" does not include:

6 (i) A licensed broker/dealer or licensed underwriter who

7 (A) Purchases shares of a domestic public corporation solely for the
8 purposes of resale to the public; and

9 (B) Is not acting in concert with an acquiring person; or

10 (ii) A person who becomes entitled to exercise or direct the exercise of a new
11 range of voting power within any of the ranges specified in subdivision 47-33-
12 9(4) solely as a result of a repurchase of shares by, or recapitalization of, the
13 domestic public corporation or similar action unless:

14 (A) The repurchase, recapitalization or similar action was proposed by or
15 on behalf of, or pursuant to any written or unwritten agreement,
16 arrangement, relationship, understanding, or otherwise with, the person
17 or any affiliate or associate of the person; or

18 (B) The person thereafter acquires beneficial ownership, directly or
19 indirectly, of outstanding voting shares of the domestic public
20 corporation and, immediately after the acquisition, is entitled to
21 exercise or direct the exercise of the same or a higher range of voting
22 power under subdivision 47-33-9(4) as the person became entitled to
23 exercise as a result of the repurchase, recapitalization, or similar action;

24 (b) "Affiliate," a person that directly, or indirectly through one or more intermediaries,

1 controls, is controlled by, or is under common control with, a specified person;

2 (c) "Announcement date," if used in reference to any business combination, means the
3 date of the first public announcement of the final, definitive proposal for the business
4 combination;

5 (d) "Articles," the original or restated articles of incorporation and all amendments
6 thereto;

7 (e) "Associate," if used to indicate a relationship with any person, means any of the
8 following:

9 (i) Any corporation or organization of which the person is an officer or partner
10 or is, directly or indirectly, the beneficial owner of ten percent or more of any
11 class or series of its equity securities;

12 (ii) Any trust or other estate in which the person has a substantial beneficial
13 interest or as to which the person serves as trustee or in a similar fiduciary
14 capacity;

15 (iii) Any relative or spouse of the person, or any relative of the spouse residing in
16 the home of the person;

17 (f) "Beneficial owner," if used with respect to any equity security, means a person:

18 (i) That, individually or with or through any of its affiliates or associates,
19 beneficially owns an equity security, directly or indirectly;

20 (ii) That, individually with or through any of its affiliates or associates has:

21 (A) The right to acquire an equity security, whether that right is exercisable
22 immediately or only after the passage of time, pursuant to any
23 agreement, arrangement, relationship or understanding, whether written
24 or unwritten, or upon the exercise of conversion rights, exchange rights,

warrants or options, or otherwise. However, a person may not be deemed the beneficial owner of shares tendered pursuant to a tender or exchange offer made by that person or any of that person's affiliates or associates until those tendered shares are accepted for purchase or exchange; or

(B) The right to vote an equity security pursuant to any agreement, arrangement, relationship or understanding, whether written or unwritten. However, a person may not be deemed the beneficial owner of any shares under this subparagraph if the agreement, arrangement, relationship or understanding to vote the shares (1) arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made in accordance with the applicable rules and regulations under the Exchange Act, and (2) is not then reportable on a Schedule 13D under the Exchange Act or any comparable or successor report; or

(iii) That has any agreement, arrangement, relationship or understanding, whether written or unwritten, for the purpose of acquiring, holding, voting (except voting under a revocable proxy or consent described in subparagraph (ii)(B) of this subsection), or disposing of an equity security with any other person that beneficially owns, or whose affiliates or associates beneficially own, directly or indirectly, the equity security;

(g) "Board," the board of directors of a corporation;

(h) "Business combination," if used in reference to a domestic public corporation and any interested shareholder of the domestic public corporation, means any of the

following:

(i) Any merger or consolidation of the domestic public corporation or any subsidiary of the domestic public corporation with:

(A) The interested shareholder; or

(B) Any other foreign or domestic corporation (whether or not itself an interested shareholder of the domestic public corporation) that is, or after the merger or consolidation would be, an affiliate or associate of the interested shareholder, but excluding (1) the merger of a wholly-owned subsidiary of the domestic public corporation into the domestic public corporation, (2) the merger of two or more wholly-owned subsidiaries of the domestic public corporation, or (3) the merger of a domestic or foreign corporation, other than an interested shareholder or an affiliate or associate of an interested shareholder, with a wholly-owned subsidiary of the domestic public corporation pursuant to which the surviving corporation, immediately after the merger, becomes a wholly-owned subsidiary of the domestic public corporation;

(ii) Any exchange, pursuant to a plan of exchange under the laws of this state or a comparable statute of any other state or jurisdiction, of shares of the domestic public corporation or any subsidiary of the domestic public corporation for equity securities of either (i) the interested shareholder; or (ii) any other domestic or foreign corporation, whether or not itself an interested shareholder of the domestic public corporation, that is, or after the exchange would be, an affiliate or associate of the interested shareholder;

(iii) Any sale, lease, exchange, mortgage, pledge, transfer, or other disposition, in

1 one transaction or a series of transactions, to or with the interested shareholder
2 or any affiliate or associate of the interested shareholder, of assets of the
3 domestic public corporation or any subsidiary of the domestic public
4 corporation to which any of the following applies;

5 (A) Having an aggregate market value equal to ten percent or more of the
6 aggregate market value of all the assets, determined on a consolidated
7 basis, of the domestic public corporation;

8 (B) Having an aggregate market value equal to ten percent or more of the
9 aggregate market value of all the outstanding shares of the domestic
10 public corporation; or

11 (C) Representing ten percent or more of the earning power or net income,
12 determined on a consolidated basis, of the domestic public corporation;

13 (iv) The issuance or transfer by the domestic public corporation or any subsidiary
14 of the domestic public corporation, in one transaction or a series of
15 transactions, of any shares of the domestic public corporation or any
16 subsidiary of the domestic public corporation that have an aggregate market
17 value equal to five percent or more of the aggregate market value of all the
18 outstanding shares of the domestic public corporation to the interested
19 shareholder or any affiliate or associate of the interested shareholder, except
20 pursuant to the exercise of rights or options to purchase shares offered, or a
21 dividend or distribution paid or made, pro rata to all shareholders of the
22 domestic public corporation other than for the purpose, directly or indirectly,
23 of facilitating or effecting a subsequent transaction that would have been a
24 business combination if the dividend or distribution had not been made;

- 1 (v) The adoption of any plan or proposal for the liquidation or dissolution of the
2 domestic public corporation, or any reincorporation of the domestic public
3 corporation in another state or jurisdiction, proposed by or on behalf of, or
4 pursuant to any written or unwritten agreement, arrangement, relationship,
5 understanding or otherwise with, the interested shareholder or any affiliate or
6 associate of the interested shareholder;
- 7 (vi) Any reclassification of securities, including any share dividend or split, reverse
8 share split, or other distribution of shares in respect of shares, any
9 recapitalization of the domestic public corporation, any merger or
10 consolidation of the domestic public corporation with any subsidiary of the
11 domestic public corporation, or any other transaction, whether or not with or
12 into or otherwise involving the interested shareholder, proposed by, on behalf
13 of, or pursuant to any written or unwritten agreement, arrangement,
14 relationship, understanding or otherwise with, the interested shareholder or
15 any affiliate or associate of the interested shareholder, that has the effect,
16 directly or indirectly, of increasing the proportionate amount of the
17 outstanding voting shares of any class or series, or securities that are
18 exchangeable for or convertible into, or carry the right to acquire voting
19 shares, of the domestic public corporation or any subsidiary of the domestic
20 public corporation that is, directly or indirectly, owned by the interested
21 shareholder or any affiliate or associate of the interested shareholder, except
22 as a result of immaterial changes due to fractional share adjustments; or
- 23 (vii) Any receipt by the interested shareholder or any affiliate or associate of the
24 interested shareholder of the benefit, directly or indirectly, except

1 proportionately as a shareholder of the domestic public corporation, of any
2 loans, advances, guarantees, pledges or other financial assistance, or any tax
3 credits or other tax advantages provided by or through the domestic public
4 corporation. However, the term "business combination" may not be deemed
5 to include the receipt of any of the foregoing benefits by that domestic public
6 corporation or any of that corporation's subsidiaries arising from transactions,
7 such as intercompany loans or tax sharing arrangements, between that
8 domestic public corporation and its subsidiaries in the ordinary course of
9 business;

10 (i) "Common shares," any shares other than preferred shares;

11 (j) "Consummation date," with respect to any business combination, the date of
12 consummation of the business combination or, in the case of a business combination
13 as to which a shareholder vote is taken, the later of:

14 (i) The business day before the vote; or

15 (ii) Twenty days before the date of consummation of business combination;

16 (k) "Control," including the terms "controlling," "controlled by," and "under common
17 control with," means the possession, directly or indirectly, of the power to direct or
18 cause the direction of the management and policies of a person, whether through the
19 ownership of voting shares, by contract, or otherwise. A person's beneficial
20 ownership of ten percent or more of the voting power of a corporation's outstanding
21 voting shares creates a presumption that the person has control of the corporation.
22 Notwithstanding the foregoing, a person is not considered to have control of a
23 corporation if the person holds voting shares, in good faith and not for the purpose
24 of circumventing this chapter, as an agent, bank, broker, nominee, custodian or

1 trustee for one or more beneficial owners who do not individually or as a group have
2 control of the corporation;

3 (l) "Control share acquisition," an acquisition, directly or indirectly, by an acquiring
4 person of beneficial ownership of shares of a domestic public corporation that, except
5 for § 47-33-8, would, if added to all other shares of the domestic public corporation
6 beneficially owned by the acquiring person, entitle the acquiring person, immediately
7 after the acquisition, to exercise or direct the exercise of a new range of voting power
8 within any of the ranges specified in subdivision 47-33-9(4) but does not include any
9 of the following:

10 (i) An acquisition before, or pursuant to a contract entered into before,
11 February 21, 1990;

12 (ii) An acquisition by a donee pursuant to an inter vivos gift not made to avoid
13 this chapter or by any person who acquires the shares of a decedent from the
14 representative of the decedent's estate other than as a creditor or purchaser; or

15 (iii) An acquisition pursuant to the satisfaction of a pledge or other security interest
16 created in good faith and not for the purpose of circumventing this chapter;

17 (iv) An acquisition pursuant to a merger, consolidation or share exchange effected
18 under ~~chapter 47-6~~ sections 248 to 271, inclusive, of Senate Bill 70 previously
19 enacted by the 2005 Legislature, if the domestic public corporation is a party
20 to the transaction;

21 (v) An acquisition for the benefit of others by a person acting in good faith and
22 not made to avoid this chapter, to the extent that the person may not exercise
23 or direct the exercise of the voting power or disposition of the shares except
24 upon the instruction of others;

1 (vi) The acquisition of shares of a domestic public corporation, in good faith, and
2 not for the purpose of circumventing this chapter, by or from any person
3 whose voting rights had previously been authorized by shareholders in
4 compliance with this chapter, or any person whose previous acquisition of
5 shares of a domestic public corporation would have constituted a control share
6 acquisition but for one or more of the exceptions stated in subparagraphs (i)
7 through (v) of this definition, unless the acquisition entitles the acquiring
8 person, directly or indirectly, alone or as part of a group, to exercise or direct
9 the exercise of voting power of the domestic public corporation in the election
10 of directors in excess of the range of voting power previously authorized by
11 the shareholders pursuant to § 47-33-12.

12 All shares the beneficial ownership of which is acquired within a ninety-day period,
13 and all shares the beneficial ownership of which is acquired pursuant to a plan to
14 make a control share acquisition, shall be deemed to have been acquired in the same
15 acquisition;

16 (m) "Corporation" and "domestic corporation," a corporation for profit incorporated
17 under the laws of this state;

18 (n) "Domestic public corporation," a corporation organized under the laws of this state
19 that is a publicly held corporation, has more than fifty shareholders, and which:

20 (i) Has either its principal place of business or its principal executive office
21 located in this state, and owns or controls assets located in this state having a
22 fair market value of at least one million dollars and has more than one hundred
23 employees in this state; or

24 (ii) Has more than five percent of its shareholders resident in this state, has more

1 than five percent of its shares owned by residents in this state, or has more
2 than two hundred fifty shareholders resident in this state.

3 For the purpose of subparagraph (ii) of this subsection, the residence of each
4 shareholder is the address of the shareholder which appears on the records of the
5 domestic public corporation;

6 (o) "Equity security,":

7 (i) Any share or similar security, any certificate of interest, any participation in
8 any profit sharing agreement, any voting trust certificate, or any certificate of
9 deposit for an equity security; and

10 (ii) Any security convertible, with or without consideration, into an equity
11 security, or any warrant, call or other option or privilege of buying an equity
12 security without being bound to do so, or any other security carrying any right
13 to acquire, subscribe to, or purchase an equity security;

14 (p) "Exchange Act," the Securities Exchange Act of 1934, (48 Stat. 881, 15 U.S.C. § 78a
15 et seq.) as amended;

16 (q) "Interested shareholder," if used in reference to any domestic public corporation, any
17 person, other than the domestic public corporation or any subsidiary of the domestic
18 public corporation, that is either:

19 (i) The beneficial owner, directly or indirectly, of ten percent or more of the
20 outstanding voting shares of the domestic public corporation; or

21 (ii) Is an affiliate or associate of the domestic public corporation and at any time
22 within the four-year period immediately before the date in question was the
23 beneficial owner, directly or indirectly, of ten percent or more of the then
24 outstanding voting shares of the domestic public corporation;

1 For the purposes of determining whether a person is an interested shareholder, the
2 number of voting shares of the domestic public corporation considered to be
3 outstanding includes shares considered to be beneficially owned by the person
4 through the application of subsection (f) of this section, but does not include any
5 other unissued voting shares of the domestic public corporation which may be
6 issuable pursuant to any agreement, arrangement, or understanding, or upon the
7 exercise of rights, options, conversion rights, or otherwise;

8 (r) "Interested shares," the shares of a domestic public corporation owned by any of the
9 following persons:

- 10 (1) The acquiring person or its affiliates or associates;
11 (2) Any officer of the domestic public corporation; or
12 (3) Any employee of the domestic public corporation who is also a director of the
13 domestic public corporation;

14 (s) "Market value," if used in reference to shares or property of any domestic public
15 corporation, the following:

- 16 (i) In the case of shares, the highest closing sale price of a share during the
17 thirty-day period immediately preceding the date in question on the composite
18 tape for New York Stock Exchange listed shares, or, if the shares are not
19 quoted on the composite tape or not listed on the New York Stock Exchange,
20 on the principal United States securities exchange registered under the
21 Exchange Act on which the shares are listed, or, if the shares are not listed on
22 any such exchange, the highest closing bid quotation with respect to a share
23 during the thirty-day period preceding the date in question on the National
24 Association of Securities Dealers, Inc. Automated Quotations System or any

1 system then in use, or if no such quotations are available, the fair market value
2 on the date in question of a share as determined by the board of the domestic
3 public corporation in good faith; and

4 (ii) In the case of property other than cash or shares, the fair market value of the
5 property on the date in question as determined in good faith by the board of
6 the domestic public corporation;

7 (t) "Person," an individual, corporation, limited liability company, partnership,
8 unincorporated association, organization or other entity;

9 (u) "Preferred shares," any class or series of shares of a domestic public corporation that
10 under the bylaws or articles of incorporation of the domestic public corporation:

11 (i) Is entitled to receive payment of dividends before any payment of dividends
12 on some other class or series of shares; or

13 (ii) Is entitled in the event of any voluntary liquidation, dissolution or winding up
14 of the corporation to receive payment or distribution of a preferential amount
15 before any payments or distributions are received by some other class or series
16 of shares;

17 (v) "Publicly held corporation," a corporation that has a class of equity securities
18 registered pursuant to § 12 of the Exchange Act, or subject to § 15(d) of the
19 Exchange Act;

20 (w) "Share," one of the units, however designated, into which the shareholders'
21 proprietary interests in the corporation are divided;

22 (x) "Share acquisition date," with respect to any person and any domestic public
23 corporation, the date that the person first becomes an interested shareholder of the
24 domestic public corporation;

- 1 (y) "Shareholder," one who is a holder of record of shares in a corporation;
- 2 (z) "Subsidiary," of a specified corporation, any other corporation of which a majority
- 3 of the outstanding voting shares entitled to be cast is owned, directly or indirectly, by
- 4 the specified corporation;
- 5 (aa) "Voting shares," shares of a corporation entitled to vote generally in the election of
- 6 directors;
- 7 (2) ~~In this chapter the following have the meanings defined in § 47-2-1~~ Terms in this chapter
- 8 mean:
- 9 (a) "Board," the board of directors of a corporation;
- 10 (b) "Class," if used with reference to shares, means a category of shares that differs in
- 11 designation or one or more rights or preferences from another category of shares of
- 12 the corporation;
- 13 (c) "Director," a member of the board;
- 14 (d) "Good faith," honesty in fact in the conduct of the act or transaction concerned;
- 15 (e) "Intentionally," that the person referred to either has a purpose to do or fail to do the
- 16 act or cause the result specified or believes that the act or failure to act, if successful,
- 17 will cause that result. A person intentionally violates a statute if the person
- 18 intentionally does the act or causes the result prohibited by the statute, or if the
- 19 person intentionally fails to do the act or cause the result required by the statutes,
- 20 even though the person may not know of the existence or constitutionality of the
- 21 statute or the scope or meaning of the term used in the statute;
- 22 (f) "Knows," or has "knowledge," has actual knowledge of it. A person does not know
- 23 of a fact merely because the person has reason to know of the fact;
- 24 (g) "Notice," is given by a corporation to a person when mailed to the person at the last

1 known address of the person, when communicated to the person orally, when handed
2 to the person, when left at the office of the person with a clerk or other person in
3 charge of the office, or if there is no one in charge, when left in a conspicuous place
4 in the office, or if the office is closed or the person to be notified has no office, or
5 when left at the dwelling house or usual place of abode of the person with some
6 person of suitable age and discretion then residing therein. Notice is given to a
7 corporation when mailed or delivered to it at its registered office. Notice by mail is
8 given when deposited in the United States mail with sufficient postage affixed;

9 (h) "Officer," a person elected, appointed, authorized, or otherwise designated as an
10 officer by the board, and any other person considered elected as an officer;

11 (i) "Organization," a domestic or foreign corporation partnership, limited partnership,
12 joint venture, association, business trust, estate, trust, enterprise and any other legal
13 or commercial entity;

14 (j) "Outstanding shares," all shares duly issued and not reacquired by a corporation;

15 (k) "Series," a category of shares, within a class of shares authorized or issued by a
16 corporation by or pursuant to its articles, that have some of the same rights and
17 preferences as other shares within the same class, but that differ in designation or one
18 or more rights and preferences from another category of shares within that class.

19 Section 8. That § 47-9A-1 be amended to read as follows:

20 47-9A-1. The Legislature of the State of South Dakota recognizes the importance of the
21 family farm to the economic and moral stability of the state, and the Legislature recognizes that
22 the existence of the family farm is threatened by conglomerates in farming. Therefore, it is
23 hereby declared to be the public policy of this state, and shall be the provision of this chapter,
24 that, notwithstanding the provisions of ~~§ 47-2-3~~ section 37 of Senate Bill 70 previously enacted

1 by the 2005 Legislature, no foreign or domestic corporation, except as provided herein, shall be
2 formed or licensed under the South Dakota Business Corporation Act for the purpose of owning,
3 leasing, holding or otherwise controlling agricultural land to be used in the business of
4 agriculture.

5 It is further declared that no foreign or domestic limited liability company, except as
6 provided herein, shall be formed or licensed under the South Dakota Limited Liability Company
7 Act for the purpose of owning, leasing, holding or otherwise controlling agricultural land to be
8 used in the business of agriculture.

9 Section 9. That § 49-33-1 be amended to read as follows:

10 49-33-1. Any number of persons, not less than three, may form a corporation for the purpose
11 of constructing, maintaining and operating a street railway or railways or for the purpose of
12 generating, transmitting or distributing electricity, the same to be sold to or used by the public
13 for heat, light or power, by making and executing articles of incorporation in compliance with
14 ~~§ 47-2-5~~ sections 28 to 31, inclusive, and sections 74 to 76, inclusive, of Senate Bill 70
15 previously enacted by the 2005 Legislature. Such corporation shall exist perpetually unless
16 otherwise stated in its articles of incorporation and shall have the power to engage in other
17 businesses set forth therein.

18 Any corporation organized under chapter 49-33 may at any time restate its articles of
19 incorporation as theretofore amended by a resolution adopted by its board of directors. The
20 secretary of state shall accept the restated articles of incorporation for filing upon receipt of a
21 certified copy of said resolution.

22 Section 10. That § 49-33-23 be amended to read as follows:

23 49-33-23. Notwithstanding the provisions of ~~chapter 47-3~~ sections 53 to 85, inclusive, of
24 Senate Bill 70 previously enacted by the 2005 Legislature, a corporation, now or hereafter

1 formed under the provisions of this chapter may provide in its articles of incorporation, or in any
2 amendment thereof, for the issuance of preferred stock in series and authorize the board of
3 directors (within the limits, if any, prescribed in such articles of incorporation or amendment)
4 to fix certain or all of the characteristics and rights thereof.

5 Section 11. That § 49-33-30 be amended to read as follows:

6 49-33-30. Any corporation organized under chapter 49-33 may merge with any one or more
7 other corporations, domestic or foreign, into a single corporation, which may be any one of the
8 constituent corporations, or may consolidate with any such corporations into a new corporation
9 formed by the consolidation. Each of the constituent corporations shall enter into a plan of
10 merger or consolidation. Such plan shall, in the case of each corporation organized under this
11 chapter, first be approved by the board of directors of each such corporation and shall thereafter
12 be submitted to and approved by each such corporation by a vote of the stockholders holding
13 a majority, or such greater percentage as is provided in its articles of incorporation, of each class
14 of the corporation's outstanding stock entitled to vote thereon under the corporation's articles
15 of incorporation at an annual or special meeting of stockholders called by the board of directors
16 for the purpose of acting on the plan. Such consolidation or merger shall otherwise be in
17 conformance with and enjoy the benefits of ~~chapter 47-6~~ sections 248 to 271, inclusive, of
18 Senate Bill 70 previously enacted by the 2005 Legislature.

19 Section 12. That § 49-33-5.1 be amended to read as follows:

20 49-33-5.1. In addition to all provisions and powers in chapters 49-33 and 49-34 which are
21 applicable to corporations organized thereunder, all provisions and powers set forth in the South
22 Dakota Business Corporation Act, ~~chapters 47-2 to 47-9, inclusive~~ sections 1 to 193, inclusive,
23 sections 308 to 346, inclusive, and sections 371 to 389, inclusive, of Senate Bill 70 previously
24 enacted by the 2005 Legislature, applicable to domestic corporations are also applicable to

1 corporations which have been or will be organized under chapters 49-33 and 49-34 except if in
2 conflict with the express provisions of chapters 49-33 and 49-34.

3 Section 13. That § 49-34-11 be amended to read as follows:

4 49-34-11. Any trust deed or mortgage executed by a corporation organized under the
5 provisions of chapter 49-33 or qualified in accordance with the provisions of ~~chapter 47-8~~
6 sections 347 to 370, inclusive, of Senate Bill 70 previously enacted by the 2005 Legislature
7 relative to the qualification of foreign corporations to transact business in this state, and carrying
8 on a street railway, natural or artificial gas or electric public utility business shall be filed and
9 recorded in the office of the secretary of state and such filing for record thereof shall create a
10 lien upon such property, real and personal, from the time of such filing, and shall have the same
11 effect, as to any property in this state described therein, as the record or filing of any similar
12 instrument in the office of the register of deeds as to property in his county as if it were filed or
13 recorded in each and every county in which any property therein described may be situated, and
14 such filing and recording in the office of the secretary of state shall be the only recording or
15 filing required. The deeds of trust or mortgages may by their terms include after-acquired real
16 and personal property, and are as valid and effectual for that purpose as if this after-acquired
17 property were owned by, and in possession of, the corporation giving the deed of trust or
18 mortgage at the time of its execution.

19 Section 14. That § 49-34-11.1 be amended to read as follows:

20 49-34-11.1. As used in §§ 49-34-11.1 to 49-34-11.4, inclusive, the term "public utility"
21 means a corporation, its lessees, its trustees and receivers, operating, maintaining or controlling
22 in this state after July 1, 1967, equipment or facilities for the production, generation,
23 transmission or distribution at retail of gas or electric service for the public and in the
24 transmission and distribution using, or having a right to use, public roads, streets, alleys, or other

1 public ways for the purpose of constructing, using, operating or maintaining wires, pipes,
2 conduits or other facilities, which corporation is organized under the provisions of chapter 49-33
3 or is qualified in accordance with the provisions of ~~chapter 47-8~~ sections 347 to 370, inclusive,
4 of Senate Bill 70 previously enacted by the 2005 Legislature as a foreign corporation authorized
5 to transact business in this state.

6 Section 15. That § 5-19-3.2 be amended to read as follows:

7 5-19-3.2. The Bureau of Administration shall maintain a list of all foreign corporations
8 licensed pursuant to ~~chapter 47-8~~ sections 347 to 370, inclusive, of Senate Bill 70 previously
9 enacted by the 2005 Legislature which are not considered resident bidders under chapter 5-19.

10 Section 16. That § 5-19-4 be amended to read as follows:

11 5-19-4. "Resident," as used in this chapter means any person who has been a bona fide
12 resident of the state for one year or more immediately prior to bidding upon the contract; a
13 partnership or association the majority of the members of which have been bona fide residents
14 of the state for one year or more immediately prior to bidding upon the contract; a limited
15 liability company organized under the laws of this state; a foreign limited liability company
16 licensed to do business within this state pursuant to chapter ~~47-8~~ 47-34A; a corporation
17 organized under the laws of this state; a foreign corporation licensed to do business within this
18 state pursuant to ~~chapter 47-8~~ sections 347 to 370, inclusive, of Senate Bill 70 previously
19 enacted by the 2005 Legislature. All of the persons, partnerships, associations, limited liability
20 companies, foreign limited liability companies, corporations, and foreign corporations licensed
21 to do business within this state shall have maintained a substantial and bona fide place of
22 business and have conducted business therefrom within this state for at least one year prior to
23 the date on which a contract was awarded. A foreign corporation licensed pursuant to ~~chapter~~
24 ~~47-8~~ sections 347 to 370, inclusive, of Senate Bill 70 previously enacted by the 2005 Legislature

1 is not a resident as defined by this section if the state or country in which it is organized enforces
2 or has a preference for resident bidders.

3 Section 17. That § 51A-14-7 be amended to read as follows:

4 51A-14-7. The provisions of ~~§§ 47-6-23 to 47-6-23.3, inclusive, and §§ 47-6-40 to 47-6-50,~~
5 ~~inclusive,~~ sections 266 to 270, inclusive, and sections 281 to 307, inclusive, of Senate Bill 70
6 previously enacted by the 2005 Legislature apply when establishing the valuation of shares of
7 bank stock owned by dissident shareholders.

8 Section 18. That § 51A-15-44 be amended to read as follows:

9 51A-15-44. When the assets have been distributed in accordance with this chapter, the
10 director or receiver shall file an account with the circuit court. Upon approval thereof, the
11 director or receiver shall be relieved of liability in connection with the liquidation and the court
12 shall cancel the charter and enter an order of dissolution. The filing of a certified copy of such
13 order with the secretary of state shall be deemed authority for the issuance of a certificate of
14 dissolution ~~pursuant to § 47-7-24.~~

15 Section 19. That § 51A-15-9 be amended to read as follows:

16 51A-15-9. The director may require reports of the progress of a bank engaged in voluntary
17 liquidation and whenever he is satisfied that the liquidation has been properly completed he
18 shall cancel the charter and enter an order of dissolution. The filing of a certified copy of such
19 order with the secretary of state shall be deemed authority for the issuance of a certificate of
20 dissolution ~~pursuant to § 47-7-24.~~

21 Section 20. That § 51A-3-22 be amended to read as follows:

22 51A-3-22. A bank may amend its articles of incorporation in the manner provided under
23 ~~chapter 47-2~~ sections 1 to 193, inclusive, sections 235 to 247, inclusive, and sections 272 to
24 279, inclusive, of Senate Bill 70 previously enacted by the 2005 Legislature, upon amendment

1 certified by its president, except that prior approval of the director shall be required for a bank
2 to: change its name or location; acquire or abandon trust powers; change the number or par
3 value of its shares of stock; change the amount of capital; or, extend its corporate existence.
4 Such approval must be based upon a finding that the security of existing creditors will not be
5 impaired by the proposed action. All such amendments shall be filed in the same manner as
6 provided for original articles of incorporation.

7 Section 21. That § 51A-3-31 be amended to read as follows:

8 51A-3-31. A bank may indemnify by purchase of insurance or otherwise any current or
9 former officer, director, employee or agent, his heirs, executors and administrators and
10 successors in interest in the same manner and to the same extent as a business corporation may
11 indemnify, pursuant to the provisions of ~~chapter 47-2~~ sections 1 to 193, inclusive, sections 235,
12 to 247, inclusive, and sections 272 to 279, inclusive, of Senate Bill 70 previously enacted by the
13 2005 Legislature.

14 Section 22. That § 51A-5-9 be amended to read as follows:

15 51A-5-9. Before qualifying or serving in this state in any fiduciary capacity, as defined in
16 § 51A-5-8, the bank or trust company shall file in the Office of the Secretary of State of South
17 Dakota, a copy of its charter certified by its secretary under its corporate seal, and a power of
18 attorney designating the secretary of state or the secretary of state's successor in office as the
19 person upon whom all notices and processes issued by any court of this state may be served in
20 any action or proceeding relating to any trust, estate, or matter within this state in respect of
21 which the bank or trust company is acting in any fiduciary capacity with like effect as personal
22 service on the bank or trust company. The power of attorney is irrevocable so long as any
23 liability remains outstanding against the bank or trust company in this state. Service of process
24 under this section may be made in the manner provided in ~~§§ 47-8-15 to 47-8-19, inclusive~~

1 section 362 of Senate Bill 70 previously enacted by the 2005 Legislature.

2 Section 23. That § 51A-7-18 be amended to read as follows:

3 51A-7-18. A branch of an out-of-state bank may not be established in South Dakota unless
4 requisite filing fees have been paid and an application as prescribed by the commission has been
5 filed with the commission and after a hearing has been held before the commission pursuant to
6 § 51A-2-16. If the commission approves the application, the director shall issue a certificate of
7 authority after the applicant confirms in writing to the director that as long as it maintains a
8 branch in South Dakota, it will comply with all applicable laws of South Dakota and provides
9 satisfactory evidence to the director of compliance with the applicable laws of ~~§ 47-8-1~~ sections
10 347 and 351 of Senate Bill 70 previously enacted by the 2005 Legislature. An out-of-state state
11 bank which establishes and maintains a branch in South Dakota may conduct any activities at
12 the branch that are authorized under the laws of South Dakota for South Dakota state banks, and
13 has all rights and privileges permitted South Dakota state bank branches.

14 Section 24. That § 52-13-53 be amended to read as follows:

15 52-13-53. When the assets have been distributed in accordance with this chapter, the director
16 of the Division of Banking files an account with the circuit court. Upon approval thereof, the
17 director is relieved of liability in connection with the liquidation, and the court cancels the
18 charter and enters an order of dissolution. The filing of a certified copy of that order with the
19 secretary of state is considered authority for the issuance of a certificate of dissolution ~~pursuant~~
20 ~~to § 47-7-24.~~

21 Section 25. That § 58-27-62 be amended to read as follows:

22 58-27-62. In addition to investments excluded pursuant to other provisions of this title, an
23 insurer shall not invest in or lend its funds upon the security of any note or other evidence of
24 indebtedness secured by its own stock as collateral or other than as authorized by §§ 58-27-31,

1 58-27-36, and 58-27-37, either directly or indirectly, to any of its officers, directors, or affiliates,
2 except that it may make loans of the type described in §§ 58-27-32 to 58-27-40, inclusive, to
3 corporate affiliates, provided that no such loan or loans to an affiliate or affiliates, so made or
4 acquired, shall in the aggregate exceed forty percent of the surplus of the insurer, and no single
5 loan shall exceed twenty percent of such surplus. The real estate involved in any such loan to
6 an affiliate shall be worth at least double the amount loaned thereon, as justified by the appraisal
7 report of an independent, competent, and recognized appraiser or appraisers. The investments
8 authorized by this section may be made notwithstanding the provisions of ~~§ 47-5-18~~ sections
9 157 to 163, inclusive, of Senate Bill 70 previously enacted by the 2005 Legislature, to the
10 contrary and without liability on the part of the officers and directors specified therein.

11 Section 26. That § 58-35-61 be amended to read as follows:

12 58-35-61. Following the adoption of the resolution approving the plan of merger required
13 by § 58-35-60, a meeting of the policyholders of each of the corporations shall be held to vote
14 upon the proposed merger plan. Written notice of the meeting of the policyholders shall be
15 given to all policyholders, which may be either an annual or special meeting. Written notice
16 shall be given to each policyholder of record whether or not entitled to vote at the meeting, not
17 less than twenty days before the meeting, in the manner provided in ~~chapter 47-4~~ sections 86
18 to 135, inclusive, and sections 371 to 389, inclusive, of Senate Bill 70 previously enacted by the
19 2005 Legislature for the giving of notice of meetings of shareholders. Whether the meeting is
20 an annual or special meeting, the notice shall state that the purpose or one of the purposes of the
21 meeting is to consider the proposed plan of merger. A copy of the resolution passed by the board
22 of directors shall be included in or enclosed with the notice.

23 Section 27. That § 58-35-69 be amended to read as follows:

24 58-35-69. If a merger has been effected pursuant to §§ 58-35-60 to 58-35-74, inclusive:

- 1 (1) The several corporations to the plan of merger are a single corporation which is that
2 corporation designated in the plan of merger as the surviving corporation;
- 3 (2) The separate existence of all corporations parties to the plan of merger, except the
4 surviving or new corporation shall cease; and
- 5 (3) The surviving or new corporation has all the rights, privileges, immunities, and
6 powers and is subject to all the duties and liabilities of a corporation organized under
7 §§ 58-35-60 to 58-35-74, inclusive, and ~~chapter 47-2~~ sections 1 to 193, inclusive,
8 sections 235 to 247, inclusive, and sections 272 to 279, inclusive, of Senate Bill 70
9 previously enacted by the 2005 Legislature.

10 Section 28. That § 58-35-74 be amended to read as follows:

11 58-35-74. The provisions of ~~chapter 47-6~~ sections 248 to 271, inclusive, of Senate Bill 70
12 previously enacted by the 2005 Legislature regarding the rights of dissenting members and
13 proxy voting do not apply to mergers of farm mutual insurers pursuant to §§ 58-35-60 to 58-35-
14 74, inclusive.

15 Section 29. That § 58-37A-14 be amended to read as follows:

16 58-37A-14. A domestic society may consolidate or merge with any other society by
17 complying with the provisions of this section and the applicable provisions of ~~chapters 47-6 and~~
18 sections 248 to 271, inclusive, of Senate Bill 70 previously enacted by the 2005 Legislature and
19 chapter 58-5. It shall file with the director:

- 20 (1) A certified copy of the written contract containing in full the terms and conditions of
21 the consolidation or merger;
- 22 (2) A sworn statement by the president and secretary or corresponding officers of each
23 society showing the financial condition thereof on a date fixed by the director but not
24 earlier than December thirty-first, next preceding the date of the contract;

1 (3) A certificate of the officers, verified by their respective oaths, that the consolidation
2 or merger has been approved by a two-thirds vote of the supreme governing body of
3 each society, the vote being conducted at a regular or special meeting of each body,
4 or, if the society's laws permit, by mail; and

5 (4) Evidence that at least sixty days before the action of the supreme governing body of
6 each society, the text of the contract had been furnished to all members of each
7 society either by mail or by publication in full in the official publication of each
8 society.

9 If the director finds that the contract conforms to the provisions of this section, that the
10 financial statements are correct and that the consolidation or merger is just and equitable to the
11 members of each society, the director shall approve the contract and issue a certificate to that
12 effect. Upon approval, the contract shall be in effect unless any society which is a party to the
13 contract is incorporated under the laws of any other state or territory. The consolidation or
14 merger is not effective until it has been approved as provided by the laws of the other state or
15 territory and a certificate of approval filed with the director of insurance of this state or, if the
16 laws of the other state or territory contain no such provision, the consolidation or merger is not
17 effective until it has been approved by the director of the other state or territory and a certificate
18 of approval filed with the director of insurance of this state.

19 Upon the consolidation or merger becoming effective, all the rights, franchises, and interests
20 of the consolidated or merged societies in and to every species of property, real, personal, or
21 mixed, and things in action belonging to the consolidated or merged societies, shall be vested
22 in the society resulting from or remaining after the consolidation or merger without any other
23 instrument. However, conveyances of real property may be evidenced by proper deeds, and the
24 title to any real estate or interest in real estate, vested under the laws of this state in any of the

1 societies consolidated or merged, do not revert and are not impaired by reason of the
2 consolidation or merger, but shall vest in the society resulting from the consolidation or merger.

3 The affidavit of any officer of the society or of anyone authorized by it to mail any notice
4 or document, stating that the notice or document has been addressed and mailed, is prima facie
5 evidence that the notice or document has been furnished to the addressees.

6 Section 30. Notwithstanding the provisions of section 394 of Senate Bill 70, previously
7 enacted by the 2005 Legislature, subdivision 47-5-6(3) remains effective until July 1, 2007.